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Current Topics.

Judicial Changes.

ALTHOUGH IT was an open secret for some time that Lord Justice SARGANT contemplated retirement at Easter, the definitive announcement of his resignation has been received by the profession with sincere regret. Since his appointment to the bench in 1913, and, more particularly, since his accession to the Court of Appeal in 1923, he has been recognised as a great master of the law, possessing also the great judicial qualifications of patience and willingness to listen; and his judgments were invariably marked by that clarity and concision which only great lawyers who are likewise great scholars can produce. His retirement deprives the bench of one of its distinguished ornaments. Happily, however, his successor in the Court of Appeal, Mr. Justice RUSSELL, has also shown great judicial qualities—a sound knowledge of law, promptitude in arriving at his conclusions, clearness in expressing them and with the saving grace of humour. This last-mentioned characteristic was happily exhibited when, a short time ago, he was doing temporary duty in the Court of Appeal. Tenacious of his own opinion, he disagreed with his common law brethren, but, very wittily, said at the conclusion of his judgment that he regretted that in this instance, in a conflict between law and equity, equity had not prevailed. As a judge of first instance he has been a marked success, and we venture to prophesy that in the Court of Appeal he will achieve still greater distinction. The judgeship in the Chancery Division rendered vacant by Mr. Justice RUSSELL'S promotion has been filled by the appointment of Mr. F. H. MAUGHAM, K.C., who has been a "special" for some years and has been engaged in a large number of important cases, so that he comes to the bench with a ripe experience of Chancery work.

Mr. H. G. Rooth.

THE PREMATURE retirement, through ill-health, of Mr. HENRY GOODWIN ROOTH, the senior magistrate at Lambeth Police Court, deprives the London bench of a popular figure. Humorous, merciful, worldly-wise and possessed of a just sense of proportion, Mr. ROOTH was exactly the right type of magistrate to preside over a court in a poor neighbourhood. If he sometimes hit hard, or spoke sharply when foolish applications were made to him, or when despicable offences had to be dealt with, he was always quick to sympathise with those in real trouble, to protect the weak from oppression, and to be lenient with those whose offences, however grievous, were the result of overwhelming difficulties and temptation rather than of deliberate choice. During his long illness there were many inquiries from the humble folk of his district, who had missed him from their midst. Five years ago, when the doctors gave him but a week to live, he was still quietly cheerful. "I had hoped to stay a little longer," he told a friend, "but if I must go now, I'll go out game." He put up such an astonishing fight that, to the amazement of the medical men, he made a recovery and returned to work. Often in pain, he struggled on grimly, never giving way, until at last his strength failed him, and he had to relinquish the work which he had always loved, and for which he had a natural aptitude. Thus, at the age of sixty-seven, after eleven years on the bench, he retires on a pension, full of regret, feeling, as he has said, that there is very little left for him to do. Mr. ROOTH has the reputation of being one of the best *raconteurs* in London; it is not surprising to learn that his early ambition was to go on the stage. "If you do," said his father, "I'll cut you off with a shilling." "Then I'll enter the church," suggested the son. "You'd be unfrocked in a week," replied his father. "And so I went to the bar," Mr. ROOTH used to say in telling the story. If the stage or the church was the poorer, the bar, and later the bench, was the richer for the choice.

Scottish Silks.

WITH THE announcement that two more Scots advocates have been appointed King's Counsel, the northern Bar is now well supplied with silks. Curiously enough, it was not till 1897 that the status of King's Counsel was recognised at the Scots Bar, and till then, with the exception of the law officers, namely, the Lord Advocate and the Solicitor-General, and the Dean of Faculty, none received the honour. A distinction, however, always, or, at all events, long, existed between senior and junior counsel, although not then marked by any difference of professional costume. An advocate became a senior when, to use the technical phrase, he "gave up writing," that is, gave up the work usually done by junior counsel in the shape of drawing pleadings. This arrangement worked excellently enough in the Court of Session, but the distinction was not recognised at the Bar of the House of Lords or in Parliamentary Committees, and consequently it might happen that a senior of equal standing with a King's Counsel in

Edinburgh was briefed with an English King's Counsel in fact much junior to himself, and it was for this as well as for other reasons that the new status was introduced in 1897. Here in England, as is generally known, members of the Bar are recommended for the dignity by the Lord Chancellor; in Scotland the names of those to be promoted to the higher rank are laid before His Majesty by the Secretary for Scotland upon the recommendation of the Lord Justice-General for Scotland. Their forensic costume is the same as that of their English confrères, save that instead of bands such as are worn here they have long white ties known as "folds."

Expert Evidence.

THE MODERN type of expert evidence based upon experiments, often with material which remains unexhausted, is very different from the old vague evidence of opinion founded on miscellaneous learning, often not too profound. The evidence is, in a sense, evidence of opinion, but it is far more testimony as to observations made by persons whose training can be supposed to enable them to make observations of that particular kind with more accuracy than the general run of men. It is evidence as to the existence or non-existence of facts, just as is the evidence of an eye-witness of an occurrence. Such expert evidence, often miscalled circumstantial, is likely to be of higher evidential value than most testimony, for the occurrences on which the inference is based can be repeated almost *ad libitum*, whereas many occurrences as to which eye-witnesses have to speak pass before their eyes with such celerity that exact observation is difficult, usually impossible. The observer is taken more or less by surprise, and may give his attention to matters of little moment, omitting to note others which turn out to be of the greatest importance. Who that has witnessed a collision would not like a slow motion repetition of it? He would be a wonderful person if not surprised by the result. The essential nature of expert evidence ought not to be lost sight of. It is too often attempted to be brushed aside as "merely circumstantial," or "mere opinion." All evidence of facts is of the same nature, and an opinion can be checked when the process by which it is arrived at is demonstrated before the judges of fact. It is so easy to be led astray by words that a little thought upon their meaning is useful, even to the wise.

School Stage Plays.

IF THE purpose of the above be to raise money, care should be taken to avoid liability for fines. In a recent case at Bath the lady Warden of Citizen House was prosecuted under the Theatre Act, 1843, s. 23 of which provides that stage play includes tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage. The town clerk stated that before Easter a series of performances of a play called "Holy Friday," written by the defendant, had been given at the Little Theatre. One of the performances had been attended by two constables, and the production was found to include dialogue, music, costumes and lighting effects. A licence should therefore have been obtained from the justices for the public performance of stage plays under s. 2. Mr. F. E. WEATHERLY, K.C. (the song writer), contended, for the defence, that the performance had been given at an educational establishment, which was no more public than a private drawing-room. The Government report dealing with the value of the drama, as a factor in adult education, had approved the work at the defendant's premises. Similar plays had been given in Bath at Church halls, where payment had been charged for admission, but admission in the present case was by invitation. The chairman, having pointed out that other organisations had obtained the necessary licence, imposed a fine of £10 and costs. A leading case on the above subject is *Shelley* v. *Bethell*, 12 Q.B.D. 11, in which the defendant fitted up a private theatre with no box-office, and on three days allowed it to be used gratuitously for stage plays. The performances were advertised, but admission was by ticket obtainable on previous payment of a fixed sum to a charity. It was held that the defendant had been rightly fined 1s. and costs under s. 2 for each performance.

Rating of Shipyards.

THE EXTENT to which the above may be influenced by the state of trade was shown by a case at the last Durham Quarter Sessions, in which Palmers' Shipbuilding and Iron Co., Ltd., appealed against an assessment of £12,000 upon their Hepburn yard. An agreement was made in 1926 whereby the company's Jarrow yard was assessed at £12,000, and their Hepburn yard at £8,000. In the next half-year the Jarrow assessment was increased to a previous figure of £20,000, but no alteration was made in the Hepburn figure. The Assessment Committee, however, instead of again reducing the Jarrow assessment, had increased the Hepburn assessment to £12,000. Their case was that the agreement with the appellants had been reached on the basis that the rateable value of the two yards was £20,000. The bench, in January last, however, had fixed the Jarrow assessment at £12,000, irrespective of the agreement, and the committee contended that the Hepburn yard was of equal value. The company's case was that the Jarrow yard had blast furnaces and steel works, and was equipped for the construction of battleships or cruisers, whereas the Hepburn yard had no such facilities. Orders booked in 1926 for delivery in 1927 were more than those booked in 1927 for 1928. The chairman, Sir FRANCIS GREENWELL (who is also judge of County Court Circuit No. 1), stated that the bench were satisfied on the evidence that a reduction below £8,000 would be justified, but in view of the agreement they saw no reason to interfere. There was no evidence of such a boom on Tyneside as would justify an increase of £4,000 over the agreed total of £20,000. The learned chairman criticised the custom of each side calling several experts, who repeated the same evidence. He considered that, in view of the re-valuation during the current year, it was inadvisable to have brought the case, which was a waste of ratepayers' money.

Duplicity in Indictment.

AN INTERESTING exception to the rule that an indictment is bad for duplicity was revealed in a recent case before Sir HENRY MADDOCKS, K.C., Recorder of Birmingham. The prisoner was charged in the first count with breaking and entering a warehouse, and stealing therein a specified number of rabbit skins. There was a second count for receiving the rabbit skins knowing them to have been stolen. The eivdence of a witness for the prosecution was that the prisoner had engaged him as a porter, and had taken him to the warehouse—which was open on their arrival. The prisoner had then pointed out certain rabbit skins, which were put into sacks and taken away by the prisoner with a horse and cart. The Recorder pointed out that there was no evidence of breaking and entering to enable the case to go to the jury on the first count, and that there was no separate count under which the prisoner could be convicted of larceny. Counsel for the prosecution referred to the 27th edition of "Archbold," Appendix B, where it is stated that in burglary, housebreaking and warehouse breaking, the other offences of which accused may be found guilty are (*inter alia*) simple larceny—if stealing is alleged. At p. 52 it is also stated that an exception to the rule as to duplicity is to be found in indictments for burglary, in which it is usual and proper to charge the defendant with having broken and entered the house with intent to commit a felony, and also with having committed the felony intended. After consulting the Assistant-Recorder, Mr. L. J. STURGE, the Recorder ruled that there was no objection to the two offences being charged in the same count, and that the case might be left to the jury on the second charge although there might be no evidence of the first. The jury found the prisoner guilty of larceny, but not of warehouse breaking, and he was sentenced accordingly.

"Residence."

TWO IMPORTANT decisions on income tax have just been given by the House of Lords. Both raise the question as to the meaning of the word "residence," both are rather near the line of liability, and both may be said to be typical of a very large number of cases that constantly call for decision. The first is *Levene* v. *Inland Revenue Commissioners*, 72 SOL. J., p. 270, which is more or less representative of that numerous class of persons who live abroad the greater part of the year but spend the rest of the time in England. The other case is *Inland Revenue Commissioners* v. *Lysaght*, 72 SOL. J., p. 270, which is typical of the man who has a home abroad but comes to England periodically for business purposes. In both these cases the Crown succeeded, and the taxpayer was called upon to pay. *Primâ facie* it would seem an easy matter to construe so simple a word as "residence," and many people, especially the plain man, will be inclined to give it some such meaning as "home." They will be disposed to look upon the home as the place where they reside, and to echo the sentiment of Burns: "My heart's in the Highlands wherever I go." But that, of course, is not the legal way of looking at the subject, and it certainly is not one that is likely to commend itself to the Income Tax Commissioners. Indeed, it had been judicially and wittily remarked that a man was taxed where he resided, and he might almost say that he resided wherever he could be taxed. In approaching these revenue questions it is necessary to disabuse one's mind of many preconceived and misleading notions. Property is not a test, nor is keeping up an establishment, nor is living in hotels—moreover, we are told that residence is an attribute of the person—a dark saying which savours of domicile. It is therefore necessary to remember in all these cases that the construction of such terms as "resident" or "ordinarily resident" must be determined with special reference to the Income Tax Acts and not to general principles or other legislation.

Riders of Coroners' Juries.

A RECENT incident at Burton-on-Trent draws attention to the fact that the above are governed by custom, the position not having been regulated by the Coroners (Amendment) Act, 1926. An inquest was held upon a one-eyed man who had been employed to oil the railway points in a brewery yard. During a snowstorm he was crossing the railway line, when he was knocked down and killed by a train of trucks which was being shunted. The head of the firm's forwarding department admitted to H.M. Inspector that they had not complied with the Government regulation requiring a sound warning in the case of moving trains. The Deputy Coroner mentioned, in summing up, that the deceased apparently took a simple risk in crossing the line, and the jury returned a verdict of "Accidental death." They added a rider that they did not think it was fair to employ a man on such a job who was disabled with regard to his sight. The Deputy Coroner remarked that he did not altogether agree, and the firm's solicitor, having expressed their sympathy, emphasised the evidence already given—that the deceased was given the job to find him work, and had himself stated that his vision was as clear as when he had the sight of both eyes. Drivers of motor vehicles are said to attach much importance to a rider exonerating them from all blame, from the point of view of their future prospects as well as for the sake of their peace of mind. Strictly speaking, however, such a rider is outside the jury's province equally with one of censure upon a driver or a medical man. Doctors are sometimes the victims of injustice by reason of a jury's prejudice published in the form of a rider, and may ask advice as to what redress may be obtained. There appears to be none, unless the coroner has recorded the rider as part of his inquisition. In that event the doctor, if anxious to figure in a leading case, might apply for a rule *nisi* for *a certiorari* to quash the rider as distinct from the verdict.

The Deportation of Victor Perosino.

WE VIEW with satisfaction the firmness of the Home Secretary in deporting this gentleman. In doing so he has acted under Art. 6 (*c*) of the Aliens Order, 1920, which gives him power, independently of any recommendation of a court, to deport any alien if he "deems it to be conducive to the public good to make a deportation order against the alien." There was in fact no recommendation for him to act upon. But the keeper of a night club convicted of flagrant breaches of the licensing laws might well, on that ground only, be deemed to be an undesirable person to continue to receive the hospitality of this country. The Home Secretary's power to act under the regulation was challenged in *R.* v. *Home Secretary, ex parte Venicoff*, 1920, 3 K.B. 72, when it was sought to put upon him that he had to hold something like a trial before exercising his powers. Lord READING, however, came to the conclusion that the Secretary of State is not a judicial tribunal for this purpose. He is an executive officer, bound to act for the public good, and it is left to his judgment whether, on the facts before him, it is desirable to make an order. The responsibility is his and he is not bound to hold an enquiry. An order is not usually made in the absence of a certificate by a court unless the alien is regarded as a serious menace to public order or morals, and no doubt such serious considerations were present to the Secretary of State's mind in ordering the deportation of VICTOR PEROSINO. It is understood that certain influences were brought to bear to prevent his acting, but this pressure has very properly been resisted. He has, and deserves to have, the support of the public in this matter.

Breach of Consent Orders.

THE ABOVE subject was considered by the Vice-Chancellor, Mr. COURTHOPE WILSON, K.C., in the Lancaster Palatine Court, at Manchester recently. In *Brown & Co. (Bradley Fold) Limited* v. *Ainsworth Mercerising Company Limited*, the plaintiffs applied by motion for leave to issue a writ of sequestration for contempt of court on breach of an undertaking embodied in an order, dated the 15th June, 1917. The action had arisen out of the alleged pollution and wrongful obstruction of the natural flow of the Blackshaw Brook, at Brieghtmet, near Bolton. An order, staying proceedings, had been made on the defendant company's undertaking, that their weir across the brook would not be raised above its level at that date, and that the free flow of water would not be impeded. This undertaking was alleged to have been broken in April, 1927, by the raising of the height level of the weir. Objection to the motion was taken on behalf of the defendant company on the following ground: When an order has been made by consent, the remedy upon breach is not a motion to sequestrate for contempt of court, but an action for specific performance or a motion for an injunction. The learned judge upheld the objection, and dismissed the motion with costs. This decision followed that in *Dashwood* v. *Dashwood*, 71 SOL. J. 911. That was a partnership action in which all proceedings were stayed by a consent order containing scheduled terms, one of which restricted the right of the plaintiff to carry on the business of an undertaker within three miles of the Guildhall, Portsmouth. The defendants moved for committal of, or the issue of a writ of attachment against the plaintiff, on account of his having solicited orders for funerals by circulars delivered within the above radius. Mr. Justice TOMLIN held that the terms in the schedule were not an order of the court which ought to be directly enforced by proceedings for contempt. The proper course was to apply for specific performance or an injunction, and then to base proceedings for contempt on any subsequent breach. The motion was therefore dismissed with costs.

Equitable Set-off Against the Crown.

[By F. E. FARRER.]

A most important decision has just been given by Rowlatt, J., in *A.-G.* v. *Guy Motors, Ltd.*, 1928, W.N. 75, to the effect that a subject cannot plead "set-off" against the Crown. The reasoning, as reported in the *Weekly Notes*, seems to be that the Old Statutes of Set-off (2 Geo. 2, c. 22, s. 13 and 8 Geo. 2, c. 24, s. 5) do not bind the Crown; that the matter is dealt with in the Judicature Act, 1925, ss. 38, 39; that Ord. 19, r. 3, made under s. 99 of the Act as to set-off "shall not affect the procedure or practice in . . . proceedings on the revenue side of the K.B.D.": Ord. 68, r. 1 (*c*). But admitting all this, which seems indisputable, is there not wholly independent of the Old Statutes of Set-off a rule existing for centuries that equities shall bind the Crown? If so, Ord. 72, r. 2, states: "Where no other provision is made by these rules the present procedure and practice shall remain." It does not appear from the short report in the *Weekly Notes* that the Great Statute 33 H. 8, c. 39, s. 79, known in the Exchequer as "the Statute of Equity," per Gould, J., in *Uppon* v. *Sumner*, 2 W. Bl. 1295, which applies to all Crown debts, *Cecil's Case*, 7 Coke 18b, and enables all equities to be alleged, *declared* or pleaded against a Crown debt, was mentioned or examined. This statute is set out in 7 Coke 19a, and the reader will recollect that in the time of Henry VIII "conscience" was the recognised technical expression for equity: "Doctor and Student Passim"; "Statham's and Brooke's Abridgements Headings."

The present writer, for the purpose of raising the alternative pleas, one of which was nearly "set-off," raised in *A.-G.* v. *Lane Fox*, 1924, 2 K.B. 498 (but which pleas it became unnecessary seriously to argue), had to go into the question of raising equities against the Crown. As a result, he submits—

(1) That set-off is fundamentally and historically an equitable, not a legal, right.

(2) That, at all events ever since the important Statute 33 H. 8, c. 39, the Crown has been bound by all equities—

(*a*) when it, the Crown, is suing a Latin information, that is, at law; and

(*b*) *a fortiori*, when the Crown is suing in equity on the English information—which is, in truth, exactly the same bill in equity as that which under the old practice the subject had, with a few formal variations, to conserve the dignity of the Crown. Further—

(3) That to preserve an equity the Crown, by its agent, the Attorney-General, might even, in certain circumstances, be aggressively sued by the subject otherwise than by way of petition of right. The statute allows "allegation and declaration" as well as "plea."

Let us first examine the authorities for the Crown against set-off: they are, as regards English cases, reduced to a single bare dictum, which, moreover, has not been subsequently accepted till this recent case of *A.-G.* v. *Guy Motors, Ltd.*

Mr. Robertson, in his "Civil Proceedings," 565, cites as his only English authority for his proposition that set-off cannot be against the Crown: the case of *Rex* v. *Coupland*, Hughes, 204, 230.

In that case Pinkerton was indebted to the Crown, and Ginger was indebted to Pinkerton, on certain bills, some not then actually due, others due. Pinkerton having sworn the usual affidavit that as Ginger had not paid he was the less able, etc., inquisition issues, and the Crown sues an immediate extent in aid against Ginger. Ginger pleads as to some of the bills "not due at the teste of the writ," and wins on that point (which, of course, was good: *The King* v. *Bebb*, Hughes 1), as to the others, "set-off according to the statute" to a greater value by money demand against Pinkerton, and wins on this point also.

Wood, leading counsel for Ginger, p. 228, argues: "Under Statute H. 8, c. 39 the court must decide according to equity and good conscience. Then this is an equitable set-off. The value is the only debt. Setting off one debt against another was allowed before the statute."

The Chief Baron, p. 230: "As to set-off, you cannot set off against the Crown: but *qu.* if this is so. It is a mistake in terms so to call it. He is to collect his own debt and that is the balance. It is a debt between subject and subject." Paraphrased, the meaning is this: "Ginger's debt is due, not to the Crown, but to Pinkerton; Ginger can set off against Pinkerton; therefore he can against the Crown"; but as a mere dictum, wholly unnecessary to the decision, "a subject a direct debtor to the Crown cannot set off." It is, alas, on such dicta, passing *sub silentio*, that much of the Prerogative has been built up. Fortunately this dictum has not been accepted.

The point was left open by Thomson, C.B., and Graham, B., in *The King* v. *Sherwood*, 3 Price, p. 274, 275, in the year 1816.

In A.D. 1818, when the King again sued a debtor to his debtor, and when counsel asserted that set-off could not be on Crown process, Wood, Baron, answered that he by no means admitted that, and that when such a question should be fairly brought before the court, it would be found to require deliberate consideration: *The King* v. *Morell*, 6 Price, p. 27. In that case, in fact, the question did not arise, as the King was suing not his own debtor but the debtor to his debtor.

Now, what is the origin of set-off?

That great judge, Turner, V.C., points out that set-off is an equitable doctrine, introduced and acted upon by equity long before any statute of set-off, and derived from the *aequitas* of the Roman law—partly to avoid multiplicity of actions, and also to avoid hardship unconscientiously inflicted "*nam dolo facit qui petit quod restituturus est*": *Freeman* v. *Lomas*, 9 Hare, pp. 112, 113.

The commons had, centuries before, called set-off an equity: "The commons pray that where a man shall be found in the Exchequer a debtor to the King, and our Lord the King is in his debt, one debt may if it so please him be rebated from the other by way of equity, etc."

"Manning," Ex. Pr. 97, note.

Now let us first go to the text-books on raising equities against the King. Coke, 4th Inst. 104, gives us the form of the Lord Treasurer's oath, parcel of which is that he shall do right to all manner of people, poor and rich, and shall purchase the King's profit in all that he may reasonably do.

Is it right or reasonable that the Crown, owing a poor man £1,000, shall sue him for £50 owed by that man, and ruin him by refusing him a set-off?: *nam dolo facit qui petit quod restituturus est*," 9 Hare, p. 113. One of the reasons why the Crown cannot sue the debtor to its debtor till the latter's debt is payable according to its tenor, is that the latter shall not be ruined by having to provide money before the day he contemplated: *The King* v. *Bebb*, Hughes, pp. 105, 106. It is too, to avoid his ruin that a surety who has not yet paid, is entitled to sue his co-sureties for contribution: *Wolmershausen* v. *Gallick*, 1893, 2 Ch. 514.

And now we come to a most important passage of Chief Baron Gilbert, one of the greatest of lawyers. He tells us that the reason why the King, as assignee of a debt could sue at law, while his great lords could not, is "because it was not to be presumed that the King would maintain an unjust suit." Later on he tells us, "By 33 H. 8, c. 39, the Court of Exchequer have power to discharge *all* debts and duties to the King *upon any equity disclosed*, and it is by virtue of this Act that they discharge recognisances . . . whenever they *move* for a discharge, they must bring a constat of the fine or recognisance upon which the *motion* must be grounded; because the motion is in nature of an account, and then a man must charge himself, before he can be discharged": "Gilbert Exchequer," 167, 191 (Ed. 1758).

In a case in 1779 occurs this passage: "section 79 usually called in the Exchequer the Statute of Equity, and which empowers the Judges to admit any matter of equity in discharge of any debts to the King": per CURIAM, *Uppon* v. *Sumner*, 2 W.Bl., 1295.

Serjeant MANNING, a great authority, questions "Manning," Ex. Pr. 97, note, whether set-off is not an equity within 33 H. 8, c. 39: he wrote, of course, long before *Freeman* v. *Lomas*, *supra*, which should conclude that point.

Instances of equities successfully raised against the Crown when suing a Latin information, that is *at law*, are *Rous Case*, cited 7 Coke, 20a. In this case the DUKE OF NORFOLK was attainted of High Treason in 38 H. 8: Edward VI sold to ROUS certain timber growing on the Duke's Suffolk Estates: ROUS bound himself to pay for same before a certain day. The King died, and before the day of payment and before ROUS cut, an Act of Parliament of Philip and Mary, avoided the Duke's attainder. The Queen (Elizabeth) sued on ROUS obligation by Latin Information, that is, she sued at law. ROUS, in defence, raised his equity under the Statute 33 H. 8; and won in the Exchequer. In *Sir Thomas Cecil's Case*, 7 Coke, 18b, CECIL had agreed with FOSTER to give in exchange for land from FOSTER, certain parcels of CECIL'S Manor of Strichston; before any exchange, CECIL conveyed to the Queen the whole manor, and, but in FOSTER'S name, FOSTER'S land agreed to be taken in exchange, and CECIL covenanted that he was well seised in fee of both, with bond to perform his covenant. In fact, the part of the manor to be given by CECIL to FOSTER exceeded the value of the land to be taken from FOSTER. But this part of CECIL'S manor passed to the Queen, apparently as legal purchaser, for value without notice: the Queen was therefore not damaged, but as to this part of the manor, CECIL'S covenant was broken, for in fact, he himself had not good title, though the Queen had obtained good title. The Queen sued on the bond at law in the Exchequer: CECIL brought his bill in equity in the Exchequer to be relieved on the Statute 33 H. 8, c. 39, which is fully set out in COKE'S report, and was relieved.

The writer conceives that either FOSTER did not dispute the Queen's right to his, FOSTER'S, land, purported to be given to her by CECIL, or that when CECIL conveyed that land in FOSTER'S name to the Queen, and covenanted that he, CECIL, was seised, etc., the covenant, so far as that particular land was concerned, was manifestly void as repugnant. Anyhow, here we see a cross-bill in the Exchequer against the Crown to an action at law by the Crown.

A fortiori, when the Crown itself sues an English information —that is the Crown's Bill in equity—the subject surely must be able to set up an equity—"he who comes into equity must do equity." The very object of the Crown bringing its Bill in equity, that is an English information, is to get the advantage given by equity of discovery and answer on oath and absence of a jury. This practice, originally a monstrous invasion of the liberty of the subject, when the Crown was suing a pure legal demand, "Robertson," 234, 235, is now sanctioned by long usage. The Crown now claims the advantage, without the disadvantage, of suing in equity.

"The subject may set up any defence against the Crown. What suit he may bring is a different matter," per Lord BLACKBURN in *Appa* v. *The Queen's Advocate*, 9 A.C., at p. 573.

The matter does not stop here, for in several cases to support his equity the subject, and not by way of petition of right, nor even by way of cross-bill to the Crown's action at law, has aggressively and successfully sued the Attorney-General in the Exchequer as representing the Crown.

HIX, in the name of his trustee TOOMES, had lent money to the defendant COOPER, who had given his bond to TOOMES; TOOMES committed suicide, with consequent legal forfeiture of the bond to the Crown; HIX, on the 33 H. 8 by English Bill, sued in the Exchequer against COOPER and the Attorney-General seeks to be, and is relieved, against the forfeiture, *Hix* v. *A.-G.*, Hardres, 176, A.D. 1662.

Again, in *Savile* v. *The Queen Mother*, Hardres, 502, the Exchequer held in a Bill in Equity upon the Statute 33 H. 8 that any matter at law, as well as in equity, might be *alleged* as well as *pleaded* by the subject in his discharge and exoneration, and that it had often been allowed by the court; and upon that ground a demurrer to this Bill was overruled. This case has this additional interest: It seems to show that the Prerogative which the Queen Consort to some extent has: Rolle Abr. II, 213, pl. 1; Mitford Pleading, 24, 25; is not lost by the death of her husband the King: "Robertson Civil Proceedings," p. 5, 7.

Again, in *Dering* v. *Winchilsea*, 2 B. & P. 270, the case was this: T. DERING, brother of the plaintiff, receiver of customs, was bound to His Majesty in three separate bonds, each in a penalty of £4,000, to account. The plaintiff and the first two defendants, Lord WINCHILSEA and Mr. ROUS, were respectively bound each one of them as the single surety to each bond. T. DERING defaulted, and the bond to which the plaintiff was surety was put in suit, and judgment recovered against the plaintiff. The plaintiff not having paid, filed his Bill against Lord WINCHILSEA and Mr. ROUS *and the Attorney-General*, praying an account and that Lord WINCHILSEA and Mr. ROUS might contribute. The court held that contribution is a matter of equity, independent of contract, decreed equal contribution, and, on payment, the Attorney-General to deliver up the bonds.

On this joinder of the Attorney-General, WRIGHT, J., a judge well versed in the Prerogative, observes: "It appears from the report in 2 B. & P., though not from the report in 1 Cox, that the Crown as creditor was made a defendant to the Bill under the name of the Attorney-General, and there could not have been any object in this except that the Crown should be controlled and prevented from enforcing its legal right inequitably against one alone of the sureties": *Wolmershausen* v. *Gullick*, 1893, 2 Ch., p. 522; see also *Pawlett* v. *A.-G.*, Hardres, p. 469; *Esquimault* v. *Wilson*, 1920, A.C. 358, 366; further, as "Gilbert Exchequer," 191, has told us, the court might discharge the subject on his mere motion. So it is conceived that, even if it be finally decided that the subject cannot plead a set-off, the subject's cheapest course, when sued on information, will be to give notice that he will move the court for a discharge.

We submit, then, that set-off is an equity within the Statute 33 H. 8, c. 39, s. 79,* and can be raised against the Crown; at all events, where the debt owed to the subject equals or exceeds that owed to the Crown. If the subject's claim is smaller than the Crown's, it seems too narrow a construction of the statute to say that s. 79 contemplates only a plea that entirely discharges the Crown debt, and so cannot apply to an equity that only partially discharges the debt; but if that contention on the part of the Crown were upheld, then it is submitted that such contention is good only when the Crown is suing at law on Latin information, and is not valid when the Crown comes into equity on English information.

At all events, on the above authorities the Crown is exposed to a cross-bill.

It may here be stated that on the Statutes of Set-off of George II the defendant may plead a less debt due from the plaintiff to him, the defendant, in reduction of the plaintiff's debt: *Rodgers* v. *May*, 15 M. & W., p. 446.

An an equity, set-off is not necessarily in the nature of a cross-action: Jud. Act, 1925, ss. 38, 39.

But let us assume it to be so; we have seen cross-bills in the Exchequer against the Crown: *Cecil's Case*; *Dering* v. *Winchilsea*, *supra*; further, we have seen altogether independent Bills not by way of petition of right against the Crown: *Hix* v. *A.-G.*; *Savile* v. *The Queen Mother*.

*NOTE.—The section of 33 H. 8 is given in the statutes at large as s. 79, but printed in "Robertson Civil Proceedings" as s. 55.

But assume that "set-off" is an equity invented only to prevent multiplicity of actions—and not also to discourage a man acting unconscientiously in demanding against the defendant what he will have to restore to the defendant; as it is see 9 Hare, p. 113: what must be the Crown's argument against set-off? Why that the subject can only sue by Petition of Right; and that the Crown is not bound to grant the fiat—and that the above cases of cross and independent bills cannot be supported.

Now, if the subject sues his petition of right under the Petitions of Right Act, 1860, the grant of the fiat seems, it is true, absolutely within the Crown's discretion: s. 2.

But the subject can proceed by petition of right independently of that Act, and as before that Act, s. 18, "Robertson," pp. 367, 372.

If he does this, and proceeds under the earlier process relating to petition of right, great authorities have laid down that the petition of right is *ex debito justitiæ*.

"And therefore is this petition called a petition of right, because of the right which the subject hath against the King by the order of his laws to the thing he sueth for?" "Staundeforde," Pr. Ch. 22, p. 73. (Ed. 1590.)

"As the prayer of this petition is grantable *ex debito justitiæ*, it is called a petition of right. . . . It seems to be within Magna Carta—*nulli vendemus nulli negabimas aut differamus justitiam vel rectum*." "Manning," Ex. Pr. 84 and note citing Magna Carta, Ch. 29.

To the same effect is "Chitty Prerogative," p. 345:

"It is the very essence of the petition that it should contain nothing of a mandatory nature. The petition, is however, substantially, as well as nominally, a petition of right, as the prayer of it is granted *ex debito justitiæ*," and see note below.

These writers wrote long before the Act of 1860. In 1883, long after the Petition of Right Act, 1860, and presumably referring to a petition *under that Act*, BOWEN, L.J., said:

"Everybody knows that that fiat is granted as a matter, I will not say of right, but as a matter of invariable grace, by the Crown whenever there is a shadow of claim, nay more, it is the constitutional duty of the Attorney-General not to advise a refusal of the fiat unless the claim is frivolous": *Ex parte Nattram*, 12 Q.B.D., p. 479.

What then is the Attorney-General saying when in face of the court he objects to the defendant's set-off? Assuming set-off to be introduced only to avoid multiplicity of actions, and not also to avoid hardship unconscientiously inflicted, he is, in real truth, saying, "The authority intends to refuse the *debitam justitiæ* to this subject, or if it is not his *debitam justitiæ*, then though his claim is not frivolous, to refuse the fiat, and in face of the Statute 33 H. 8, and the authorities in the Exchequer to ruin this man, though the Crown owes him a just debt."

In theory of law the King is always present in his court, hearing the Crown's agent, the Attorney-General, advancing such a contention. Will not His Majesty's representatives, the Judges, reply, "His Majesty governs under, not above the law, and by the mouth of us his representatives sitting here, he disavows your contention as his agent"?

NOTE.

At the common law, before the various statutes that gave right to traverse an office, when the King's title to freehold had been once found by office, the party rightfully entitled could not traverse the office, "but was put to his petition of right (in nature of his real action, which he could not have against the King, because the King by his writ cannot command himself) to be restored to his freehold and inheritance": *The Saddlers Case*, 4 Coke 54 (B), 55 (A); Coke, 2nd Inst., 688.

The exceptions to this rule seem to have been (*a*) where the office on its face mentioned the rightful owner's title, 4 Coke, 55 (A), 55 (B), and (*b*) where the rightful owner was in occupation, and also the office did not legally put him out of possession, but the King was still required to bring an action to recover possession, as for instance, if the office had found that the King's tenant for life or years had committed waste, 4 Coke, 56 (B). In such case the King had to bring an action to recover, under the Statute of Gloucester, the very place wasted.

Offices finding the King's title to goods or chattels personal might always at common law be traversed, because the goods being perishable could not abide the delay of a petition: "Staundeforde," Pr. 60, 67; Coke 2nd Inst., 688, though if the subject chose he could bring his petition: *Brooke Petition* (3).

Offices finding the King's title to terms of years in land, or to copyholds which in strict law are but tenancies at will, could not at common law be traversed; as to these the subject was put to his petition of right: *Brooke Petition* (2), (17), (19), (24), (30); Preamble to Statute of Offices, 2 Ed. 6, c. 8, given at large, Coke, 2nd Inst., 687.

It will be seen then that if as suggested, "Robertson Civil Proceedings," 376, 377, the Crown had uncontrolled discretion to refuse the fiat, to a petition of right brought under the old practice, and not under the Act of 1860; then that the Crown in spite of all verbiage, was and still is, in many cases above, and not under the laws, and in many cases, could and still can, automatically appropriate the subject's property.

The House of Lords successfully maintained against the House of Commons its claim that a writ of error by way of appeal to itself, was *ex debito justitiæ*, a writ of right and not of grace: "Hargrave's Preface to Hale's Jurisdiction of the House of Lords," pp. 200, 201.

In the *Saddlers Case*, cited above, the court treated the petition as in real truth the subject's real action—though as a matter of respect the form was that of a petition.

Observe how clearly the Legislature in the great Statute of Offices, 2 Ed. VI, c. 8, Coke, 2nd Inst., 687, treats the subject's petition of right as his action *ex debito justitiæ* against the Crown. The 4th Branch, 2nd Inst., 691, he shall have his traverse "without being driven to any petition of right"; the 8th Branch, 2nd Inst., 694, on every traverse given by that Act where the party to pursue that traverse "should *by the order of the Common Laws* of this realme have been put to *sue* by petition to the King" there shall be writs of search.

No doubt the fiat can be refused to a claim obviously on the face of it frivolous. But that is a protection which the courts can also give a subject against a subject's claim: Ord. 25, r. 4, and compare J.A., 1925, s. 51; it is submitted that, where the claim is not on its face obviously frivolous and the petition is brought under the old practice, the fiat cannot be refused, in spite of "Robertson Civil Proceedings," 376, 377.

A Conveyancer's Diary.

Appointment by Personal Representatives of Trustees of Infants' Property.

Attention may be drawn to a useful provision contained in Ad. of E.A., 1925, s. 42 (1), empowering the personal representatives of a person dying before or after the commencement of that Act to appoint a trust corporation or two or more individuals, not exceeding four, to be trustees for the infant, as respects the property of the deceased to which the infant "is absolutely entitled under the will or on the intestacy" of the deceased, and which is not devised or bequeathed to trustees for the infant.

The sub-section is obviously designed to meet the difficulties encountered under the old law and illustrated by *Re Salomons*, 1920, 1 Ch. 290. This it does by enabling personal representatives to be relieved of responsibility, as respects the beneficial interests of infants, and to proceed with the distribution of the deceased's estate.

The sub-section applies as well to cases where the death occurred before 1926 as to cases of death after 1925, and relates

to property generally—chattels and things in action as well as land; see the words "devise," "legacy" and "residue of the estate of the deceased or any share therein."

The personal representatives may appoint a trust corporation or two, three or four (but no more) individual trustees—a restriction in this case being put on the number of trustees of chattels or things in action as well as of land. They may appoint one or more of themselves to be such trustees.

Difficulty is caused in the interpretation of s. 42 (1) by the fact that the provision is expressed to apply "where an infant is *absolutely* entitled under the will or on the intestacy." Can an infant *ever* be said to be *absolutely* entitled on an intestacy where the deceased person dies after 1925? The statutory trusts in favour of the issue and other classes of relatives of a deceased intestate only refer to "all or any the children or child of the intestate, living at the death of the intestate, who *attain the age of twenty-one years or marry under that age . . .*": Ad. of E.A., 1925, s. 47 (1) (i).

An infant who marries under twenty-one becomes absolutely entitled. Such a person can give a valid receipt for income: *ib.*, para. (ii), though not for capital not being accumulations of income: T.A., 1926, s. 31 (2) (i). Thus personal representatives under a post-1925 intestacy would clearly be able to rely on s. 42 (1) as respects the share of a married infant.

But can they safely act in reliance on s. 42 where there is a post-1925 intestacy, under which an unmarried infant is entitled? As has already been observed, and as is pointed out in a note, on p. 563, to 2 Wolst. & Cherry, "the interest of each taker is contingent upon his or her attaining the age of twenty-one years or marrying." It does not seem therefore advisable to rely on s. 42 in the connexion referred to, at least until the court has had an opportunity to consider the point; though the beneficial operation of the provision will in the meantime, unfortunately, be very considerably restricted. Seeing that the main object of the section was to render unnecessary the lodgment of infants' property in court, it would be difficult to argue that, where the property is vested in personal representatives on a contingent trust, this is not a case which was not deliberately excluded from the ambit of the section. Thus, if the trust failed, the personal representatives should be in a position to distribute the property among the statutory next-of-kin or the residuary legatees.

Trusts for Sale *versus* Settled Land.

We notice that our esteemed contemporary the *Law Journal* is discussing the question whether it would not have been simpler to have abolished all strict settlements, leaving it open only to settle land, or rather the proceeds of sale thereof, by means of a trust for sale. It must have occurred to the writer that, had such a reform been put forward, the Bills would inevitably have been lost. Such a scheme would have necessitated a power for the trustees to delegate *all* their trusts and powers (saving only the right to receive capital) to the tenant for life, not merely the leasing powers and powers of management. It is difficult enough to get individual trustees to act at all; in the case of large estates it is only feasible on the ground that they will become mere depositaries of money. Still, after, say, fifty years of experience in working the new trusts for sale, under which the proceeds can be entailed, it is possible that such a scheme would be accepted. So long as memories can recall the situation in force before 1883, any attempt which would appear to depart from the principle that the tenant for life must remain the master of the situation would be doomed to instant failure.

In the meantime it is open for the public and their advisers to make as many settlements creating successive interests by way of trust for sale as may be considered expedient. If and when this becomes the dominant practice, the time will have arrived for the Legislature to rule out other methods.

Landlord and Tenant Notebook.

Surrender by Personal Representative of Deceased Tenant.

A somewhat curious case on surrender will be found reported in the *Law Journal County Courts Reporter* for March, 1928. The case in question is *Smith* v. *Wiseman* (reported *ib.*, at p. 13), and it deals with the question as to the manner in which a surrender of a tenancy can be effected by a person who is in the position of a personal representative of a deceased tenant.

The facts were briefly as follows:—

Premises which were not within the Rent Acts had been let in May, 1927, on a weekly tenancy to one M. M sub-let a portion of the premises to his son-in-law and daughter, the defendants. In October, 1927, M died, his widow and the defendants continuing to occupy the premises, and the rent being paid by the widow to the landlord. In January, 1928, the widow informed the agent of the landlord that she could not afford to pay the rent any longer, and that she would give up possession the following day. To this the agent assented, and the original tenancy agreement executed in favour of M was delivered up by the widow to the agent. The widow accordingly left the premises, but the defendants continued in occupation and refused to vacate, whereupon proceedings in ejectment were brought against them by the landlord.

The main question which was considered by the learned county court judge was whether there had been any effectual surrender by the widow. The court held that there had been no valid surrender, the ground of the decision being that inasmuch as at common law the only person who can effect a surrender is the person in whom the tenancy is vested at the time, the widow was not the proper person to make the surrender, since although she might have been entitled to a grant of letters of administration in respect of the estate of her deceased husband, the original tenant, no such application had been made by, nor consequently had any grant been made to her, so that she was not the actual legal representative of the tenant at the time of the alleged surrender.

Although this view of the law appears to be quite correct, the inference drawn from the facts as to the true position of the parties seems somewhat open to question. If the original tenancy was not to be regarded as having been vested in the widow, yet, by reason of the payment and acceptance of rent subsequently to the death of the original tenant, a new implied tenancy might have been considered as having been created between the widow and the landlord, and if that was the proper inference to be drawn from the facts, then it is submitted a valid surrender was effected.

Quite apart from the question whether or not there was any valid surrender, it would seem that the defendants, as undertenants could not in the circumstances have been affected by any act of surrender performed by their immediate sub-lessor.

It is a general principle of the law, that a surrender cannot operate to extinguish the rights of third persons who have acquired an interest in the premises from the persons surrendering unless they are also parties to the surrender.

Even assuming that a valid surrender had been made the interest of the defendants in the premises could not have been affected thereby, so that it would have been necessary for the landlord to have determined the interest of the defendants in one of the usual ways, e.g., by notice before he would have been in a position to commence proceedings to recover possession.

Yet another argument which was urged on behalf of the landlord might be examined with advantage. It was contended that the tenant had not power to sub-let and that consequently the defendants had no title. Such an argument is clearly erroneous if it is remembered that a tenancy is an estate upon condition which is liable to forfeiture on breaches

of certain conditions, and which does not automatically terminate on any such breach, and that since the commencement of the Law of Property Act, 1925, breaches of covenants against assigning, etc., are put on the same footing as the other general breaches which require as an essential condition of forfeiture service of a notice under s. 146 of the Law of Property Act, 1925. The original tenancy must therefore be forfeited in this manner before a landlord can claim possession against the under-lessee and even then it is possible for the under-lessee to obtain relief under sub-s. (4) of s. 146.

Our County Court Letter.

THE NATURE OF HIRE PURCHASE.

THE test case of *Yorkshire Finance Corporation* v. *Lynch*, dealing with the position of finance firms, was heard recently at Leeds County Court. The claim was for £16 7s. 9d., money due under an agreement, and the defendant was a cycle dealer. The plaintiff firm carried on business with the object of giving facilities for hire purchase to dealers, the method being as follows: The dealer, having found a customer, would sell the article in the first place to the plaintiff firm, and they in turn would let out the article to the dealer's customer on hire purchase. The plaintiff firm's profit would be derived from the difference between the price they paid the dealer, and that which they charged to the customer. The dealer undertook that in the event of (1) the customer making default in the payment of instalments, and (2) the plaintiff firm resuming possession of the article under their hire purchase agreement, he (the dealer) would either (*a*) buy the article back for the amount outstanding, less 10 per cent, or (*b*) within three months find another customer for the article on hire purchase. In the above case the plaintiff firm had resumed possession of certain cycles, in regard to which customers of the defendant had made default in keeping up their payments. The cycles had been returned to the defendant, but he had refused to accept delivery. The case for the defendant was that the plaintiff firm came within the definition in the Moneylenders Act, 1900, s. 6, and—as they held neither a justices' certificate under the Act of 1927, s. 2, nor an excise licence under s. 1—they were unable to recover. Dealers were induced to sell goods on the terms of the agreement sued upon, by reason of the plaintiff firm's advertisements of facilities afforded to dealers in cycles, gramophones, etc., as a means of increasing business. His Honour Judge Woodcock stated that the dealer's case was that, having found a customer, he only ordered the article from the wholesaler in reliance on the money advanced to him (the dealer) by the plaintiff firm. The contention for the defence was that the basis of this transaction was money-lending. It was plain, however, that (1) the plaintiff firm could never have recovered the money from the defendant as money lent, and (2) the defendant could never have put an end to the transaction by tendering the money and claiming a return of the article from the plaintiff firm. The latter had a qualified ownership in the article during the whole period, and at the same time the hire-purchaser had conditional or potential ownership. In such a state of affairs there was no relationship of lender and borrower. Judgment was therefore given for the plaintiff firm for the amount claimed.

The difficulty of ascertaining the nature of the transaction, in cases of hire-purchase, had previously been illustrated in *National Cash Register Co. Ltd.* v. *Stanley*, 1921, 65 SOL. J. 643. The agreement there provided: "In consideration of your agreeing to deliver the said register, I . . . agree to rent the same for ten months certain, and to pay by way of rent for the use and hire of the register the sum of £8 per month . . . At any time within one month after payment of all the rent . . . the hirer may purchase the register by paying an additional sum of £8." The defendant paid £2 on account, but subsequently refused to accept delivery, and the plaintiff company at the end of four months issued a default summons for £30, being the amount then due after giving credit for the £2. The deputy county court judge at Bloomsbury entered a non-suit, against which the plaintiff company appealed, but unsuccessfully. In the Divisional Court Mr. Justice Lush stated that unless an actual debt was incurred, the action was not maintainable. By signing the agreement the defendant did not become indebted in the liquidated sum of £80, and on breach of the agreement the plaintiff company's only remedy was in damages. Payment for the agreed sum may sometimes be claimed, e.g., where furnished lodgings are let for a fixed period, but the distinction there is that an interest is vested by the agreement in the person who agrees to pay rent. In the case before the Court, however, the register had not been selected by the defendant, nor had he ever used it. Mr. Justice Sankey—as he then was—concurred.

Practice Notes.

DIVORCE.

THE decisions in *H.* v. *H.* and *Hyman* v. *Hyman*, noted 72 SOL. J. 270, following upon that in *Dewe* v. *Dewe* and *Snowdon* v. *Snowdon*, 72 SOL. J. 69, assert an overriding power in the Matrimonial Courts of this country to insure that a wife or some time wife shall be duly maintained, notwithstanding the existence of a deed between the parties making provision therefor, and that the covenants have been performed, or have been discharged by a compromise of the wife's claim.

Dewe v. *Dewe* and *Snowdon* v. *Snowdon* arose in courts of summary jurisdiction on a summons for wilful neglect to maintain, and deal with the effect of bankruptcy upon a covenant by a husband to pay money by way of maintenance where the wife has proved in the bankruptcy upon a capitalised claim.

H. v. *H.* and *Hyman* v. *Hyman* were proceedings in the Divorce Division upon the filing of a petition for permanent maintenance where a wife had entered into a deed of separation containing a covenant that she would not claim maintenance further than the money payments provided under the deed.

Lord MERRIVALE in *H.* v. *H.*, in granting the wife leave to be heard on her petition for maintenance, said that the respondent's objection to her claim on the ground that he had purchased the covenant on which he relied by a grant of property, so far as it had weight, would be open for consideration when the registrar determined the amount of maintenance, and it is submitted that a similar direction would have been given in the bankruptcy cases if the wife had been in any way secured.

The arresting consideration which emerges is that a wife in the circumstances may no longer be bound by her contract where matters of maintenance are concerned, and she is in a peculiarly favourable position with regard to a respondent husband, because he cannot petition to vary the separation deed as a post-nuptial settlement, and the worst that can happen to her upon a finding by the registrar that she is being amply maintained under the deed is to be mulcted in costs.

The position of the husband, however, in the courts of summary jurisdiction would appear not to be so unfavourable. There the matter still proceeds on the basis of contract, and the common law liability of the husband for his wife's necessaries, and it is submitted that the key to the husband's position is to be found in the dictum of Lord MANSFIELD in *Ozard* v. *Durnford*, "Selwyn, N.P.," 13th ed. : "If upon separation the husband agrees to make her a separate allowance and pays it the husband is not liable" (for necessaries).

In *Dewe's* and *Snowdon's* cases, owing to the operation of bankruptcy, the husband ceased to pay and the wife's common law right revived.

It is to be borne in mind, however, that the dividends received by the respective wives amounted to a few pence in the pound, and on the assumption that continued payment by the husband is a test a husband would still appear to have an arguable defence to a summons if he could show that his wife had proved on a capitalised claim, and had received a substantial dividend, and the observations in *ex parte Bates*, 11 Ch. D. 914, as to proof having been for better or worse, would apply.

Correspondence.

The Evasion of Super-tax.

Sir,—One of the purposes of the article which appeared in your issue of the 4th February last was to emphasise the length and breadth of the exceptions to s. 21 of the Finance Act, 1922. The negative of the terms of its sub-s. (6) were therefore deliberately and not inadvertently stated. The inadvertence of which the writer was guilty was the failure to cancel out a negative from para. (*c*) of the sub-section; but such inadvertence must have been obvious even to the casual reader—for the article contains not only a statement of the whole of the sub-section, but also an explanation of its effect—and it did not influence the expression of opinion to which your subscriber refers. It is submitted that nothing in the sub-section requires the actual allotment of shares *to the public*, and that if the public have been invited to subscribe for shares it does not matter to whom the shares are in fact allotted. If the submission is correct, then, it would seem that the requirements of the sub-section have been fulfilled and its protection invoked by the filing and issue of a prospectus—even though all the shares allotted have been allotted to the directors and their elect. Even if the submission is incorrect—and there would seem to be some fresh support for it in the dicta of the Court of Appeal in the recent case of *Lynde* v. *Nash*, 1928, 44 T.L.R., it is nevertheless clear that there is nothing in the sub-section to prevent the deliberate failure to make the prospectus attractive or to advertise it in the usual fashion or otherwise to encourage the taking up of shares by the public. It is understood that examples of such failure were not uncommon and that they culminated in the passing of s. 31 of the Finance Act, 1927. That section now provides that s. 21 of the Finance Act, 1922, shall apply to any company "which is under the control of not more than five persons and which is not a subsidiary company or a company in which the public are *substantially* interested." YOUR CONTRIBUTOR.

Personal Liability of Solicitor to Pay Costs.

Sir,—Surely you are "previous" in saying in the interesting article under this heading in your issue of the 7th inst. that Mr. Justice Astbury made an order in *White* v. *Eustace* that the solicitor for the defendant should be personally liable to pay the costs of a counter-claim in the event of such costs not being obtainable by the plaintiff from the defendant.

According to *The Times* report, what his lordship did was to give the plaintiff liberty to apply as against the defendant's solicitors that they should show cause why they should not personally pay such costs, the judge pointing out that the solicitors were entitled to defend themselves on such an application being made.

I know nothing of the parties or the solicitors concerned, but think you may like to correct the statement referred to in your next issue.

6th April. GRAY'S INN.

Sir,—According to *The Times* report of *White* v. *Eustace*, your correspondent is quite correct in stating that the order made by Mr. Justice Astbury was to the effect that the plaintiff was given "liberty to apply as against the defendant's solicitors that they should show cause why they should not personally pay the costs of the counter-claim in so far as they might not be recovered from the defendant." The order that was made by the learned judge appears, therefore, to have been tantamount to an order *nisi*, as it were, against the solicitors, that they should pay the costs of the counter-claim, it being open to them, if they elected, to appear and argue against the order being made, as it were, absolute.

The effect of the order, therefore, appears to me to have imposed a *prima facie* liability on the solicitor to pay the costs in the event referred to above, if an application for that purpose was made by the plaintiff. YOUR CONTRIBUTOR.

The London Solicitors' Golfing Society.

Sir,—It has occurred to me that many solicitors practising in the London area and who play golf may feel diffident about joining the London Solicitors' Golfing Society because they do not possess a short handicap, and are therefore of opinion that they would be of little assistance to the society.

Good players are not essential, although they are useful when playing team matches against other societies. The support of all golfing solicitors is required, whatever their handicap, as the society serves many useful purposes besides affording a pleasant means of recreation.

The summer meeting of this society will take place on 31st May next, at Walton Heath.

I should be much obliged if you could give this letter prominence in your columns.

The London Solicitors' Golfing Society,
Bank Buildings, H. FORBES WHITE,
Ludgate Circus, E.C.4. Hon. Sec. and Treasurer.
April, 1928.

"Simplified Conveyancing."

Sir,—Adverting to our letter of the 9th February last, 72 Sol. J., p. 118, your readers may be interested to know that after a personal interview at the Registry, we have obtained a grant of administration under s. 162 of the Judicature Act, 1925, to the trustees of the will of the testator, on the registrar's order.

The amount of the bond was limited to twice the free estate of the tenant for life and one surety was required, who had to justify, and the Treasury Solicitor's renunciation had to be filed.

The Registry could not see their way to make a grant under s. 155, on the ground, we understand, that no trust estate was vested in the tenant for life.

Petersfield, Hants, BURLEY & GEACH.
12th April.

[We are greatly obliged to our correspondents for this information.—ED. *Sol. J.*]

Landlord and Tenant Act, 1927.

Sir,—I enclose a cutting from yesterday's *Daily Mail* which may be of interest to you.

Personally, I do not quite see the reason for the Home Office being in such a state of perturbation as apparently the Act does not apply to improvements made before the commencement of the Act or made less than three years before the termination of the tenancy, so that I cannot quite understand how tenants whose terms expire on 25th March, 1929, were intended to benefit under the Act.

I should appreciate your view on the matter.

Northampton. P. HAYWARD.
24th March.

[The cutting enclosed by our correspondent points out the difficulty as to tenancies expiring Lady Day last, the subject of our note on p. 195, *ante*. He appears to have overlooked the fact that claims for compensation in respect of goodwill are not limited, like claims in respect of improvements by s. 2 (1) (*a*) of the Act, to goodwill arising or created after the date of operation of the Act, but may be made in respect of goodwill acquired before that date. Such claims under such leases, therefore, are subject to the difficulty raised, which has been extensively noticed in the public press.—ED., *Sol. J.*]

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Income Tax—Foreigner—Remittance of War Loan—Dividend by Trustee—Responsibility for Tax.

Q. 1221. Mrs. T, as tenant for life, is entitled to the income on £600 5 per cent. War Loan, 1929-47. She is an American by birth, has a permanent residence in America, and has resided there all her life. Her income from all sources does not exceed £100. The executors of the will under which she is entitled reside in this country and the interest on the War Loan is received by them and remitted to Mrs. T. The Inspector of Taxes makes the following contention: "The executors in their capacity as executors receive War Loan interest. Such interest is then paid by them to Mrs. T but the interest does not reach Mrs. T in the form of War Loan interest and the correct and legal procedure appears to be that the executors should be assessed for the War Loan interest and Mrs. T will then receive taxed income which is not specifically earmarked as War Loan interest, but goes to her in the form of income from a taxed trust," and proposes submitting additional assessments. Is the Inspector's contention correct, or can Mrs. T claim relief? A reference to authorities will oblige.

A. The demand of the Inspector appears to be based on the Income Tax Acts, Sched. E, general rules 5, 13, and 14, and see also s. 101. The beneficiary, with a total income of £100 would be exempt from taxation under the F.A., 1920, s. 18 (1), but, being resident in America, s. 24 (1) displaces the application of s. 18 (1), unless her case is included in one of the provisos. If so, the executors (who, paying income, do so as trustees, for they have impliedly assented to the bequest under the doctrine of *Wise* v. *Whitburn*, 1924, 1 Ch. 460) should claim exemption for her on an affidavit made under the Income Tax Act, 1918, s. 28 (3). If not, they must pay the tax as required, and remit interest tax deducted.

Personal Representative—Receipt for Purchase Money—L.P.A., 1925, s. 27.

Q. 1222. Can the sole surviving executor and trustee of a testator who died in 1889 having devised his realty to his executors and trustees upon trust for sale now effect a sale without appointing at least one additional trustee?

A. The personal representatives, as such, had no power of sale, the testator having died prior to the Land Transfer Act, 1897, and ss. 14-17 of the L.P.A. (Amend.) A., 1859, not being in point, but their ability to sell arose from the express devise upon trust for sale. As s. 27, sub-s. (2), of L.P.A., 1925, only enables a sole personal representative, as such, to give a valid receipt for the proceeds of a sale, the appointment of at least one additional trustee to act with the sole survivor is inevitable. No assent is necessary, or indeed possible.

Trustee—Convicted of Fraudulent Conversion—Removal—Title to Land.

Q. 1223. A testator, G.H., by his will appointed his wife, his son, and his solicitor to be the executors and trustees thereof. The testator died in 1914, and his said will was duly proved by the three executors therein named in the Principal Registry in 1914. The testator's estate consisted mainly of moneys secured on mortgage of leasehold properties in this locality. The family had such implicit faith in the solicitor-trustee that all dealings with the estate of the deceased were left entirely in his hands. The solicitor trustee referred to was recently tried at the Glamorgan Assizes on charges of fraudulent conversion, and convicted and sentenced to a period of four years' penal servitude. Several of the mortgagors of the properties are considerably in arrear with their interest, and the mortgagees are now desirous of exercising their power of sale. The difficulty which arises is as to how the two remaining trustees can confer a good title on a purchaser. Would it be sufficient to recite in the assignment to the purchaser the fact of the solicitor-trustee having ceased to be a trustee on account of his sentence to penal servitude; or would it be necessary to make application to the court for his removal from the trusteeship?

A. For the purposes of this answer, it is assumed that the estate of G.H. has been fully administered. The convicted trustee is most certainly a person who is "unfit to act" within the T.A., 1925, s. 36 (1) (as to unfitness in the much milder case of a bankrupt, see *re Roche*, 1842, 2 Dr. & War. 287), and a new trustee may therefore be appointed in his stead. A recital in the deed of appointment as to the unfitness will bind purchasers, see s. 38 (1). If the trust is not on the title there is somewhat more difficulty, for, on the usual recital that the new trustees were entitled in equity, purchasers would make requisition as to the non-execution of the deed by the convict. The fact that there is a trust of the mortgage moneys therefore may have to be disclosed on the title, but it is not likely to create difficulty.

Local Authority—Gift of Land for General Purposes—Conveyance—Procedure.

Q. 1224. When acting on behalf of an urban district council which has no private Act facilitating the purchase of real estates and considering the form of conveyance, is there any reason, other than that it is desirable to show that such a body is properly exercising its statutory powers, why the purpose for which real estate is bought under the powers conferred by various Acts should be specified in the conveyance when the contract relative to the matter has no provision relative to the matter? In the present circumstances, a council is buying some land and a mansion house thereon, the money for which is being provided by a local resident as a gift but stipulating that it is to buy this land and old mansion house. He makes no stipulation as to the way in which the property is to be used, and the council are undecided as yet as to what they will do with the property, but they have in mind that a part of it may be used for playing fields, a part of it may possibly be used as allotments, part as a public library, and part as their future council offices. If a clause should be embodied in the conveyance in such a case, would it be best to state the purposes as those of the Public Health Act, 1875, with a subsequent clause to the effect that if the property is not required for the purposes aforesaid the same may, with sanction of the Minister for Public Health, be used for any other purposes for which the council "are or hereafter shall be authorised by statute to acquire land"? Would it be in order to state the purposes merely as those "for which the council are or hereafter shall be authorised by statute to acquire land"?

A. A local authority can hold any land without licence in mortmain, see P.H.A., 1875, s. 7, and some statutes expressly enable them to accept gifts of land for specific purposes, e.g., for a cemetery, P.H. (Am.) A., 1879, s. 2 (3), for housing, Housing Act, 1925, s. 114, open spaces, Open Spaces Act, 1906, s. 5 (1). The Ministry of Health is stated also to hold the view that the P.H.A., 1875, s. 164, authorises the acceptance of a

gift for public pleasure grounds (which would include playing fields), see "Glen," 14th ed., p. 422. If the P.H. (Am). A., 1907, Pt. X, has been adopted, the land acquired may be appropriated under s. 95, as the Ministry of Health approves. Perhaps a conveyance of the lands to the council by the vendor, by the direction of the purchaser, the donor, for public pleasure grounds, or any statutory or other purposes for which the council may be authorised to acquire, hold and dispose of the said premises, or a similar habendum would meet the case. Possibly on any disposal a purchaser might require the consent of the county council if the land can be used for allotments, see answer to *Q.* 618, vol. 71, p. 78.

Agreement in 1903 by Liquidator of Dissolved Company for Sale of Land Subject to Mortgage—Agreement Lost—No Conveyance—Title.

Q. 1225. In 1874 certain freehold and leasehold property was held by a limited company, C, subject to a mortgage to A (the mortgage of both freehold and leasehold is contained in a single instrument). In 1900 the mortgage was transferred by A to B in the usual way. Some time before 1903 the company, C, went into liquidation and the property was sold, subject to B's mortgage, to D. D, wishing to re-sell, took no conveyance at the time, and no conveyance to D has ever been executed, nor can any contract of sale be found, and D has enjoyed possession of the property since 1903 to the present time. D now wishes to sell part of the property. The liquidator of C is dead, and B is dead, leaving two executors of his will who are living. D wishes to make title to the property. How can this best be done? How can the executors of B register their mortgage?

A. D obtained title by the Statutes of Limitations before 31st December, 1925, and such title could be forced on a purchaser if properly proved. The questioner does not make it clear whether he also obtained title as against B. If not, B, or his executors if he died before 1926, and his estate was not completely administered (see *Wise* v. *Whitburn*, 1924, 1 Ch. 460) otherwise the beneficiaries under his will, took the statutory term, in the freehold under the L.P.A., 1925, 1st Sched., Pt. VII, para. 1 (D taking the legal fee simple under para. 3), and in the leaseholds, if the mortgage was by assignment, under Pt. VIII, para. 1. D can therefore give title accordingly. B's executors or beneficiaries do not need to register their mortgage if the land is not registered land.

Trustees—Settlement upon Trust for Sale—Settlor proposing to Purchase Property for the Purpose—Whether Conveyance and Settlement can be Comprised in One Deed.

Q. 1226. A has purchased freehold property from B for £500, but no conveyance thereof to him has yet been made. He wishes to settle the property on his son for life, with remainder to his son's daughter. Is there any objection (the value being small and the trusts simple) to the transaction being carried through by one deed, by which, after a recital of A's desire to make a voluntary settlement, B, by A's direction, conveys the property to two trustees for sale (with full power to postpone) and to stand possessed of the proceeds upon the desired trusts?

A. In the circumstances above, there is no provision requiring two deeds like that in the S.L.A., 1925, s. 4 (1), and the L.P.A., 1925, s. 27 (1), provides for the case in which the trusts appear on the title. The opinion is therefore given that the proposed deed, though in somewhat unusual form, will have full operation as desired. As between the settlor and the trustees, however, the conveyance is a voluntary one, and, to save future requisition, the stamp should be adjudicated under the F.A., 1910 (1909-10), s. 74 (2). And future appointments of trustees will be subject to the T.A., 1925, s. 35.

A UNIVERSAL APPEAL.
To Lawyers: For a Postcard or a Guinea for a Model Form of Bequest to the Hospital for Epilepsy and Paralysis, Maida Vale, W. 9.

Reviews.

A Concise Treatise on the Law of Wills. By Sir Henry S. Theobald. Eighth Edition by J. I. Stirling, M.A. London: Stevens & Sons, Ltd. October, 1927. cxxviii and 1151 pp. £2 10s. net.

The author and editor of all previous editions of "Theobald on Wills" was not able to take part in the preparation of this—the eighth—edition. Accordingly, the arduous and responsible task of bringing this invaluable companion of the Chancery practitioner up to date fell upon Mr. Stirling.

The size of the work has been increased by some 100 odd pages. This is regrettable; for it means that the book has become too bulky. There are several passages here and there throughout the volume which might well have been deleted as obsolete; thus, on p. 10, there is a reference to "Service in the East India Company," as formerly effecting a change of domicile; on p. 24, to the wife of a convict transported for years; on pp. 90, 91 to dower, copyholds and freebench. The short chapter on "Trust and Mortgage Estates" (pp. 98, 99) might well have disappeared. The greater part of p. 118 could have been deleted. The above are random selections to support the suggestion that the pruning scissors might well have been used with greater severity. But, on the other hand, it must be pointed out that the new matter added in the edition generally bears the hall-marks of the earlier editions, namely, terseness, lucidity and accuracy.

Attention may be drawn to one or two instances in which certain matters have been overlooked in revising the old law. Thus, no reference is made on p. 26 to the British Nationality and Status of Aliens Acts, 1914; on pp. 87, 88, to the Judicature Act, 1925 (in fact, that Act does not seem to be referred to at all throughout the volume except on p. 561). On pp. 184-193 we should like to have seen one statement, and that of the present position—the old cases on Locke King's Acts being reviewed in the light of the Administration of Estates Act, 1925—rather than two statements, one of the pre-1926 position and the other of the post-1925 law. That for which the practitioner will feel most grateful to find in a work of the authority of "Theobald" is guidance amidst the far-reaching changes of the new Acts. On that account the reluctance of editors to modify, where modification is obviously called for owing to recent changes, the words of the original author of their work, is to be deprecated.

A new feature of this edition is contained in Appendix C in which are printed the statutory will forms, together with a few short precedents illustrating their application.

It is not too much to say that the new "Theobald" is indispensable to the practitioner.

Manual of Trust Law. A. H. Cosway, author of "The Conveyancer's Notebook," "The Devolution of Settled Land," etc., etc. pp. xii and 166 (with Index). 1928. The Solicitors' Law Stationery Society, Ltd. London: 22, Chancery-lane, W.C.2; 27 and 28 Walbrook, E.C.4; 6, Victoria-street, S.W.1; 49, Bedford-row, W.C.1; and 15, Hanover-street, W.1. Liverpool: 19 & 20, North John-street. Glasgow: 66, St. Vincent-street. 7s. 6d. net.

This is an eminently practical work, in which the author explains the most important duties of a personal representative, a tenant for life (who is a trustee), a trustee of a personalty settlement, the newly-created "trustee for sale" (who now occupies a very important position in conveyancing matters), and also the special trustees now necessary under the recent legislation for dispensing with the legal estates in undivided shares to protect the estates of infants, etc. The author makes no pretence at anything like an exhaustive treatise, but he has collected and explained very clearly and concisely all the points likely to arise in the administration of a trust, and for this the profession should be grateful. There is a table of cases, an appendix of useful forms, and a good index. To all interested in the problems of present-day conveyancing we heartily commend this useful book. W.P.H.

NOTES OF CASES.

House of Lords.

Inland Revenue Commissioners *v.* **Lysaght.** 9th March.

INCOME TAX—RESIDENCE—DIRECTOR OF ENGLISH COMPANY—DOMICILE IN IRELAND—MONTHLY VISITS TO ENGLAND AS DIRECTOR—"ORDINARILY RESIDENT."

In 1919 the respondent retired from business and went to live in Ireland, where he had a family estate. He continued, however, to act as advisory director to an English company and came to England regularly for two or three days monthly to attend meetings of directors which were held at a hotel at Bath, where he generally stayed when in England. He occasionally visited other places for the purposes of the company's business, but he rarely came to London, and always visited England alone, his wife and family remaining in Ireland. On being assessed to income tax he claimed exemption as not being either "resident" or "ordinarily resident" in the United Kingdom. The Court of Appeal held (Lawrence, L.J., dissenting) that he was resident in Southern Ireland, and neither resident nor ordinarily resident in the United Kingdom.

THE HOUSE allowed the appeal by a majority, the Lord Chancellor's dissenting opinion being read by Lord Warrington.

Lord SUMNER said he thought it was the shortness of the aggregate time during which Mr. Lysaght was here that constituted the principal though not the only point in his favour, but the question of a longer or a shorter time, like other questions of degree, was one peculiarly for the Commissioners. He did not doubt that the Commissioners understood the word "residence" not otherwise than in its correct legal signification, and so applied it. Accordingly he did not think that their decision could be interfered with. He thought, therefore, that the appeal should be allowed.

Lords BUCKMASTER, ATKINSON and WARRINGTON concurred.

COUNSEL: *The Attorney-General* (*Sir D. Hogg*, K.C.), *The Solicitor-General* (*Sir T. Inskip*, K.C.), and *R. P. Hills*; *Latter*, K.C., and *Stephen Benson*.

SOLICITORS: *Solicitor of Inland Revenue*; *Whites & Co.*, for *Clarke, Sons & Press*, Bristol.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Levene *v.* **Inland Revenue Commissioners.** 9th March.

INCOME TAX—EXEMPTION—RESIDENCE ABROAD—ANNUAL VISITS TO ENGLAND — "RESIDENT" — "ORDINARILY RESIDENT."

The appellant in 1919 gave up his establishment in England and went abroad, with the intention of living abroad the greater part of each year. In each subsequent year until 1925 he spent seven or eight months in various places abroad, and the remaining four or five months in the United Kingdom, living in hotels or staying with friends or relations. On assessment to income tax he claimed exemption for the years 1921-1925 inclusive, on the ground that he was not resident in the United Kingdom. The Commissioners held that he was resident in England and liable to income tax under s. 46 and Sched. C. The Court of Appeal held (affirming Rowlatt, J.) that the decision of the Commissioners was a right one.

THE LORD CHANCELLOR (whose opinion was read by Lord Atkin) said the question was whether the appellant ordinarily resided in the United Kingdom for the purposes of s. 46 and he thought that there was material upon which the Commissioners could answer that question in the affirmative. The suggestion that in order to determine the question one must count the days which he spent in this country, and those which he spent elsewhere appeared to him to be without substance. The expression "ordinary residence" occurred again and again in the Income Tax Acts, where it was contrasted with usual or occasional or temporary residence, and he thought that it connoted residence in a place with some degree of continuity and apart from temporary absences. The expression differed little from the word "residence," and it was difficult to imagine a case in which a man while not resident here was yet ordinarily resident here. He thought that the finding of the Commissioners could not be disturbed and the appeal failed.

Lords SUMNER, WARRINGTON, ATKINSON and BUCKMASTER concurred.

COUNSEL: *Maugham*, K.C., and *Nissim*; *The Attorney-General* (*Sir D. Hogg*, K.C.), *The Solicitor-General* (*Sir T. Inskip*, K.C.), and *R. P. Hills*.

SOLICITORS: *M. A. Jacobs*; *Solicitor of Inland Revenue*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

H. *v.* **H.** Lord Merrivale, P. 6th and 26th March.

DIVORCE—SEPARATION DEED—COVENANT BY WIFE NOT TO SUE FOR SUPPORT, MAINTENANCE OR ALIMONY — SUBSEQUENT DISSOLUTION OF MARRIAGE—COVENANT NO BAR TO PRESENTATION OF PETITION FOR MAINTENANCE.

This summons adjourned into court was an appeal from the Registrar dismissing the petition of the sometime wife of the respondent for maintenance on the ground that she was debarred by a covenant in a separation deed from claiming support, maintenance or alimony in excess of the annual sum of £50 agreed to be paid to her under the deed. Counsel for the appellant wife referred to *Bishop* v. *Bishop* and *Judkins* v. *Judkins*, 1897, P. 138, and *Reid* v. *Reid*, 1926, P. 1, and submitted that the covenant was against public policy and not binding. Counsel for the respondent said this was a matter of importance which had arisen in a clear-cut form for the first time. A deed of separation usually contained a covenant to terminate its provisions if the marriage were subsequently dissolved, but there was no such provision in this deed. The deed still subsisted despite the change of status involved by the cutting of the marriage tie. The man was bound by his covenants and the former wife by hers. He referred to *Morrall* v. *Morrall*, 1881, 6 P.D. 98; *Gandy* v. *Gandy*, 1882, 7 P.D. 77, 168; *Besant* v. *Wood*, 12 Ch. D. 605; 1879, 12 Ch. D. 605; *Bosworthick* v. *Bosworthick*, 1926, P. 159; *Clifford* v. *Clifford*, 1884, 9 P.D. 76; *Tress* v. *Tress*, 1887, 12 P.D. 128; and *Roe* v. *Roe*, 1916, P. 163, and submitted that there was nothing in the statutes to absolve the appellant from her contractual liability, or to permit the court to expunge her covenant under the provisions for the variation of marriage settlements.

Lord MERRIVALE, P., in the course of a considered judgment, said: . . The application for maintenance was met by the respondent with an affidavit setting up an agreement under seal between the parties, whereby the former wife covenanted that she would not thereafter commence or prosecute any action or other proceeding for compelling the respondent to allow her any support, maintenance or alimony. That deed, it is truly said, was not made in contemplation of any proceeding for dissolution of marriage, but by way of compromise of a suit for divorce *a mensa et thoro* in Ireland, where the parties were then domiciled. The marriage between them was incapable of dissolution under their then condition except by Act of Parliament. No doubt an express undertaking by a wife in this country that she would not sue her husband for maintenance if he should be guilty of adultery would be held to taint with immorality a contract of which it should be found to have formed part. If adultery supervened and a petition for divorce was filed in respect of such adultery, the bargain would be evidence of collusion. But this is not the true ground on which the issue has to be dealt with. In my opinion, the appellant covenanted, as a wife, against making any claim, as a wife on her husband, as a husband, for support,

maintenance or alimony. She is no longer a wife, but having been the wife of this respondent, she comes to ascertain whether the court shall deem it right that her sometime husband shall make her some pecuniary allowance . . . His Lordship referred to some of the authorities cited, and in holding that the appellant was entitled to be heard on her petition, said: The objection which is made to her claim on the ground that the respondent purchased the covenant on which he relies by a grant of property, so far as it has weight, will be open for consideration when the court determines what payment, if any, having regard to the appellant's fortune, the ability of the respondent, and the conduct of the parties shall be deemed reasonable. His Lordship gave leave to appeal, subject to the respondent's giving security for costs.

COUNSEL: *Sir James O'Connor*, K.C., and *J. W. Morris* for the appellant wife; *Clifford Mortimer* and *Richard Ellis* for the respondent husband.

SOLICITORS: *Evelyn Jones & Co.; J. Westcott & Sons.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Hyman *v.* **Hyman.** Hill, J. 20th February and 27th March

DIVORCE—TRIAL OF ISSUE—SEPARATION DEED—AMPLE PROVISION FOR WIFE—COVENANT NOT TO SUE FOR FURTHER ALIMONY OR MAINTENANCE—DECREE OF DISSOLUTION—PETITION FOR MAINTENANCE—RESPONDENT'S PLEA OF COVENANT IN BAR—JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 190.

This was an issue ordered to be tried at the instance of the respondent in connexion with the filing of a petition for maintenance by the wife petitioner who had obtained a decree of dissolution of marriage against him. By a deed of separation, dated 19th September, 1919, the petitioner had covenanted that neither she nor any person on her behalf would at any time thereafter endeavour to compel the respondent "to allow her any alimony or maintenance" further than the £20 per week, and two sums of £200 and £2,000 provided under the deed. A third party guaranteed the weekly payment. The respondent set up the covenant in the deed in bar to the petitioner's claim on the ground that he had complied with all the terms of the deed, and asked for a declaration that the deed was a valid answer to the petition for maintenance. At the adjourned hearing his lordship drew the attention of counsel to the judgment of the President in *H.* v. *H.* on the 26th March last, reported in *The Times* of the 27th March. Counsel for the respondent said that he accepted his lordship's intimation that he felt himself bound by the judgment in *H.* v. *H.*, but the petitioner could not have it both ways. If she claimed maintenance she was not entitled to such provision in addition to the benefits which she obtained under the deed. She must give up one or the other. Counsel on both sides cited various authorities as to the effect of a decree of dissolution upon a separation deed, and drew analogies from the law of contract.

HILL, J.: The question is whether the petitioner can proceed for an order for maintenance under s. 190 of the Judicature Act, 1925. I am bound by the judgment delivered yesterday by the President in the case of *H.* v. *H.*, on the same point, which arose on a summons. The President allowed the petition of the former wife in that case to proceed. The only difference is that in the present case there is a guarantor. If this agreement be at an end he is discharged, but his position is beside the point here, as I am concerned with the relative position of the petitioner and respondent. The petitioner is not prevented by reason of her covenant from pursuing her petition for maintenance, though the legal incidence of the deed will have to be considered when that claim is heard. I therefore give judgment for the petitioner, with costs of the issue. His lordship granted leave to appeal, subject to security being given for the petitioner's costs.

COUNSEL: *Sir Herbert Cunliffe*, K.C., and *H. Durley Grazebrook* for the respondent; *Sir Walter Schwabe*, K.C., and *Tyndale* for the petitioner.

SOLICITORS: *John B. & F. Purchase & Clark; Heywood and Ram.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the following Judicial Appointments:—

The Honourable FRANK RUSSELL, one of the Judges of His Majesty's High Court of Justice, Chancery Division, to be a Lord Justice of Appeal, in the place of the Right Honourable Sir Charles Henry Sargant who has resigned.

Mr. FREDERICK HERBERT MAUGHAM, K.C., to be one of the Justices of the High Court of Justice, Chancery Division, in the place of the Honourable Frank Russell.

Mr. Justice Maugham took the oaths of his new office on Tuesday and sat for the first time as a Chancery judge.

The King has approved the appointment of Sir WILLIAM SOLOMON, K.C. S.1., K.C.M.G., Chief Justice of South Africa, to be a member of His Majesty's Most Honourable Privy Council. Sir Solomon was called to the Bar by the Inner Temple in 1876, was a Judge of The Appellate Division of the Supreme Court of South Africa from 1910 to 1927, when he was appointed Chief Justice of the Dominion.

The King has approved the appointment of Mr. COURTENEY TERRELL, Barrister-at-law, to be Chief Justice of the High Court of Judicature at Patna, in the place of Sir Thomas Frederic Dawson Miller, K.C., who has resigned.

Mr. REGINALD MITCHELL BANKS, K.C.,, M.P., has been appointed Recorder of Wigan, in place of Sir Frank Boyd Merriman, K.C., M.P., recently appointed Solicitor-General. Mr. Mitchell Banks was called to the Bar in 1905, and took silk in 1923.

Mr. WILLIAM THOMAS LAURANCE, K.C., has been appointed Recorder of Bournemouth. Mr. Laurance was called to the Bar in 1895 and took silk in 1920.

Mr. HARRY GEEN, Barrister-at-law, has been appointed Recorder of Poole. Mr. Geen was called to the Bar in 1913.

Mr. JOHN FREDERICK EALES, Barrister-at-law, has been appointed Recorder of Coventry. Mr. Eales was called to the Bar in 1910, previous to which he practised at Coventry as a Solicitor.

The following have been appointed to be King's Counsel:—

Mr. EDWARD JAMES NALDRETT. Mr. Naldrett was called by the Middle Temple in 1894.

Mr. WALTER HEDLEY (Recorder of Richmond, Yorks). Mr. Hedley was called by the Inner Temple in 1904.

Mr. NOEL BARRE GOLDIE. Mr. Goldie was called by the Inner Temple in 1905.

Mr. GEORGE MALCOLM HILBERY. Mr. Hilbery was called by Gray's Inn in 1907.

Mr. ARTHUR MOON. Mr. Moon was called by the Inner Temple in 1907.

Mr. RAYMOND WALTER NEEDHAM. Mr. Needham was called by the Middle Temple in 1908.

Mr. ABRAHAM THOMAS JAMES. Mr. James was called by the Middle Temple in 1911.

Mr. HAROLD DERBYSHIRE. Mr. Derbyshire was called by Gray's Inn in 1911.

Mr. TREVOR HAVARD HUNTER. Mr. Hunter was called by the Middle Temple in 1911.

Mr. WILLIAM BRUCE THOMAS. Mr. Thomas was called by the Middle Temple in 1912.

Mr. WILLIAM JOHN HENRY BRODRICK, O.B.E., and Mr. JOHN BERTRAM WATSON, Barristers-at-law, have been appointed Metropolitan Police Court Magistrates. Mr. Brodrick was called to the Bar in 1899 and Mr. Watson in 1919. Mr. Watson who was admitted a Solicitor in 1900 and from 1902 to 1911 served as Deputy Coroner for the County of Durham, was sworn in before Mr. Justice Salter and Mr. Justice Talbot on Wednesday.

Mr. C. W. ALLAN-HODGSON, Solicitor (who was admitted in 1895), has been appointed Clerk of the Peace and Clerk of the County Council of Cumberland. The appointment has been in the Hodgson family for nearly a century.

Mr. EDWIN M. NEAVE, Solicitor, Deputy Town Clerk of Hammersmith, has been appointed Town Clerk of Swindon (Surrey). Mr. Neave was admitted in 1920.

Mr. Charles Edmund Crane, Solicitor, Ashby-de-la-Zouch and Coalville (Leicestershire), has been appointed Clerk to the Justices of those Petty Sessional Divisions. Mr. Crane was admitted in 1904.

Mr. Alfred Henry Timms, Solicitor, has been appointed Clerk to the Justices of the Swadlincote Division. Mr. Timms was admitted in 1892.

Mr. Victor John Gadban, Solicitor, Alton (Hants), has been appointed Clerk to the Alton Justices. Mr. Gadban was admitted in 1904.

Mr. John B. M. Peters, Solicitor, Assistant Solicitor in the Office of Mr. A. M. Oliver, Town Clerk of Newcastle-on-Tyne, has been appointed Assistant Solicitor to the North Riding County Council. Mr. Peters was admitted in 1920.

Mr. G. P. Clarke, Solicitor, Taunton, has been appointed Coroner for the Western District of Somerset. Mr. Clarke was admitted in 1920.

PRESENTATION TO The Right Honourable Sir KINGSLEY WOOD, P.C., M.P.

A number of prominent men, who have been associated with Sir Howard Kingsley Wood, Solicitor, in his public and professional career, have selected the occasion of his being sworn a member of His Majesty's Most Honourable Privy Council to make a presentation to him, marking their appreciation of the many great services he has rendered to the nation.

The presentation is to take the form of a portrait of Sir Kingsley by the well-known artist, Mr. Arthur T. Nowell.

The Committee is under the chairmanship of Lord Hayter of Chislehurst, Sir George Rowland Blades, Bt., G.B.E., M.P., being treasurer, and Sir Thomas Neill, J.P., honorary secretary. The following gentlemen are also members: Mr. W. A. Appleton, C.B.E., Mr. W. H. Brown, Mr. E. Lindsay Blee, Rt. Hon. Lord Carson, Hon. C. Archibald Chubb, Viscount Curzon, C.B.E., M.P., Rt. Hon. Sir Edwin Cornwall, Bt., Mr. J. D. Cassells, K.C., M.P., Mr. Alfred Cox, M.B., O.B.E., Alderman Josiah Gunton, Mr. J. M. Gattie, L.C.C., Mr. F. T. Halse, L.C.C., Sir George Hume, M.P., L.C.C., Mr. J. A. Jefferson, F.I.A., Mr. E. H. Kemp, L.C.C., Captain A. Larking, Rev. J. Scott Lidgett, M.A., D.D., Sir Stanley Machin, Rt. Hon. T. P. O'Connor, M.P., Mr. J. Proctor, Rt. Hon. Walter Runciman, M.P., Mr. P. Rockliff, Rev. W. Hodson Smith, Mr. Alfred Skeggs, Sir Josiah Stamp, Mr. A. C. Thompson, Mr. G. Tilley, and Alderman Sir George Wyatt Truscott, Bt., whilst the list of subscribers included Mr. W. H. Aldcroft, F.I.A., Mr. H. H. Austin, F.I.A., Lord Bethell, Sir Joseph Burn, K.B.E., Rt. Hon. Lord Dalziel of Kirkcaldy, Col. E. H. Eley, Mr. E. C. Farmer, F.I.A., Mr. J. Proctor Green, Mr. J. Wilcock Holgate, Sir G. W. H. Jones, M.P., Sir Walter Greaves Lord, K.C., M.P., Mr. J. Murray Laing, F.I.A., F.F.A., Rt. Hon. Lord Marshall, Sir George May, Sir Frederick Roll, Bt., Mr. E. S. Shrapnell Smith, Sir Charles Wakefield, Sir Ernest Wild, K.C., Sir Graham and Lady Wood, and Dr. A. S. Woodwark, C.M.G., C.B.E. The presentation will take place in July.

Sir Kingsley Wood was admitted in 1903, and is senior partner in the well-known firm of Kingsley Wood, Williams and Co., Solicitors, 15, Walbrook, E.C.4 and 30, Euston Square, N.W.1.

THE STOCK EXCHANGE OFFICIAL INTELLIGENCE.

We are informed that for the second year in succession the above work has gone out of print, the sales in each year having reached an unprecedented figure. The 1928 issue is, however, being reprinted, and copies will be obtainable (at £3 each) on and after 14th May. Orders should be placed forthwith with the publishers (Spottiswoode, Ballantyne & Co., Ltd., 1, New Street-square, E.C.4), or with the usual booksellers. The "Official Intelligence" is it is stated the only work of its kind that is published with the sanction of the Committee of the Stock Exchange.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Russell.
M'nd'y April 23	Mr. Jolly	Mr. More	Mr. Synge	Mr. Ritchie
Tuesday .. 24	Hicks Beach	Ritchie	Jolly	*Synge
Wednesday. 25	Synge	Bloxam	Ritchie	*Jolly
Thursday . 26	More	Jolly	Synge	*Ritchie
Friday 27	Ritchie	Hicks Beach	Jolly	Synge
Saturday .. 28	Bloxam	Synge	Ritchie	Jolly
	Mr. Justice Romer.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
M'nd'y April 23	Mr.*Jolly	Mr. Bloxam	Mr. More	Mr Hicks Beach
Tuesday .. 24	Ritchie	More	*Hicks Beach	*Bloxam
Wednesday. 25	*Synge	Hicks Beach	Bloxam	*More
Thursday . 26	Jolly	Bloxam	*More	*Hicks Beach
Friday 27	*Ritchie	More	Hicks Beach	*Bloxam
Saturday .. 28	Synge	Hicks Beach	Bloxam	More

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

EASTER SITTINGS, 1928.

COURT OF APPEAL.

In Appeal Court No. I.

Tuesday, 17th April.—Exparte Applications, Original Motions, Interlocutory Appeals from the Chancery and Probate and Divorce Divisions, and if necessary, Chancery Final Appeals.
Wednesday, 18th April.—Final Appeals from the Chancery Division will be taken and continued.

In Appeal Court No. II.

Tuesday, 17th April.—Exparte Applications, Original Motions, Interlocutory Appeals, and if necessary, Final Appeals from the King's Bench Division.
Wednesday, 18th April, Thursday, 19th April, Friday, 20th April } Final Appeals from the King's Bench Division
Monday, 23rd April—Admiralty Appeals.

HIGH COURT OF JUSTICE.

Chancery Division.

GROUP I.

Mr. Justice Eve.

The Non-Witness List.

Mondays .. Chamber Summonses.
Tuesdays .. Short causes, Pets, fur cons and Adjourned Summonses.
Wednesdays Adjourned Summonses.
Thursdays .. Adjourned Summonses.
Lancashire Business will be taken on Thursday, 19th April, 3rd and 17th May.
Fridays .. Motions and Adjourned Summonses.
N.B.—Motions will be heard on Thursday, 24th May, not on Friday, 25th May.

GROUP II.

Mr. Justice Astbury.

The Non-Witness List.

Mondays .. Chamber Summonses.
Tuesdays .. Mots, Short Causes, Pets, Procedure Summonses and Adjourned Summonses.
Wednesdays Fur Cons and Adjourned Summonses.
Thursdays .. Adjourned Summonses.
Fridays .. Motions and Adjourned Summonses.

Mr. Justice Russell.

The Witness List—Part II.

Mr. Justice Russell will sit daily for the disposal of the List of longer Witness Actions.

Mr. Justice Tomlin.

The Witness List—Part I.

Actions, the trial of which cannot reasonably be expected to exceed 10 hours.
Except when otherwise announced in the Daily Cause List.
Mondays .. Sitting as Chairman of The Royal Commission on Awards to Inventors or of The University of London Commissioners.
Tuesdays .., Wednesdays, Thursdays .., Fridays .. } The Witness List. Part I.
Bankruptcy Judgment Summonses will be taken on Tuesdays, the 24th April, and 15th May.
Bankruptcy Motions will be taken on Tuesday, 1st May.

Mr. Justice Romer.

The Witness List—Part I.

Actions, the trial of which cannot reasonably be expected to exceed 10 hours.
Mondays .. Companies (Winding up) Business.
Tuesdays .., Wednesdays, Thursdays .., Fridays .. } The Witness List. Part I.

Mr. Justice Clauson.

The Witness List—Part II.

Mondays .., Tuesdays .., Wednesdays, Thursdays .., Fridays .. } The Witness List. Part II.

A Divisional Court in Bankruptcy will sit on Tuesday 8th May.

THE COURT OF APPEAL.

A List of Appeals for hearing, entered up to Thursday, April 5th, 1928.

FROM THE CHANCERY DIVISION.

(Final List.)

Ronald Frankau Productions ld v Bell (security ordered)
The London Holeproof Hosiery Co ld v Padmore
Re Blackwell Blackwell v Blackwell
The British United Shoe Machinery Co ld v The Gimson Shoe Machinery Co ld
Amusements (London) ld v The Alhambra Co ld
Re Maria L'Epine, dec. Re a Petition of Right of A K Mason and ors
Re Same & Same
Re Gaul & Willox and Houlston's Contract Re Law of Property Act, 1925
Manchester Corpn v Audenshaw U D C
Re Trade Marks Acts Re Ducker's Trade Mark, No 446798
Dickson v The Halesowen Steel Co ld (security ordered)
Hood's Trustee in bankruptcy v The Southern Union General Insce Co of Australasia ld
Companies Winding Up Re Companies (C) Act, 1908 Re The Anglo German Coal Co ld
Webb v Lewis
Re Figgis Maurice v Figgis
Re Arbitration Act, 1889 Way v Bishop
Re Oppenheimer, dec. Grenville v Oppenheimer
Re Same Same v Same (from Interlocutory List)
Walbrook v Clare

Fish v The National Union of General Workers ld
Re an Application by Fanfold ld Re Trade Marks Acts, 1905 & 1919
Re Keystone Knitting Mills ld Trade Mark Re Trade Marks Acts, 1905 to 1919

(In Bankruptcy.)

Re a Debtor (No 1,069 of 1927) Expte The Debtor v The Petitioning Creditor & The Official Receiver
Re a Debtor (No 99 of 1928) Expte The Petitioning Creditor v The Debtor
Re a Bankruptcy Notice (No 292 of 1928) Expte The Debtor v The Judgment Creditor

FROM THE PROBATE AND DIVORCE DIVISION.

(Final List.)

Re Alfred Gates, dec.
Re Same
Lukehurst L S v Lukehurst B L
Carr A F v Carr D M

FROM THE CHANCERY AND PROBATE AND DIVORCE DIVISIONS.

(Interlocutory List.)

Gaskain v Lessing
Hyman M W v Hyman M P and re an issue
Hyman M P & Hyman M W
Way v Bishop
Re F Stanley & Co ld Re Companies (C) Act 1908

FROM THE KING'S BENCH DIVISION.

(Final and New Trial List.)
For Judgment.

Lloyds Bank ld v The Chartered Bank of India Australia & China
Same v Same

For Hearing.

William Bean & Sons v The Flaxton Rural District Council
Corbin Greener & Cook v Dawson
Powell Lane Manufacturing Co ld v Putnam
Ironmonger & Co v Bradley Dyne
Perrott & Perrott ld v England
The Merchants Marine Insce Co ld v The Liverpool Marine & General Insce Co ld
Gwynne v Stopes
Foreman & Ellams ld v Federal Steam Navigation Co ld (s.o. pending a decision in House of Lords)
Frenkel v MacAndrews & Co ld
Dew v United British Steamship Co ld
Amiesite Asphalte Co of America v Taylor
Warren & Bacon v Francis
Re Arbitration Act 1889 The Hain Steamship Co ld v The Board of Trade
Rider Trustee of Estate of G W Wake dec in bankruptcy v Clarke
Hayes v Ebbw Vale Medical Society & ors
Same v Same
Gent v Calder
Rooper v Visotzky
Hogg v Baylis
Bowen v Pickett
Sinanide v La Maison Kosmeo
Palmer v W Weddel & Co ld
Tucker v Tucker
Munn v The Henslowe Bus Co ld
Hilton v Harris
Smith Hogg & Co ld v Louis Bamberger & Son
Same v Same
Pragnell v W T Henley's Telegraph Works Co ld
Re an Arbitration between Symington & Co & The Union Insurance Society of Canton ld
Davis v P E Mahoney & Sons
Equitable Investment Co ld v Dixon & Co

FROM THE KING'S BENCH DIVISION.

(Revenue Paper—Final List.)
1926.

Commrs of Inland Revenue v The Mashonaland Ry Co ld

1928.

Mills v Jones (Inspector of Taxes)
Attorney-General v Luncheon and Sports Club ld
(Revenue Paper—Interlocutory List.)
Attorney-General v Timber Operators & Contractors ld

FROM THE KING'S BENCH DIVISION.

(Interlocutory List.)

Deutsche Bank v A G der Manufacturen J A Woronin Leutschg and Cheshire
Pyke v Goldman Goldman v Pyke

FROM THE ADMIRALTY DIVISION.

(Final List.)
With Nautical Assessors.

Budeny—1926—Folio 338 Owners of ss Kut v Owners of ss Budeny
Same Same v Same
Hero—1927—Folio 2,025 James W Cook & Co ld v Owners of ss Hero
Vapierian — 1927 — Folio 245 Owners of ss Aagot v Owners of ss Vapierian
El Uruguayo—1926—Folio 433 Owners of ss Felipe v Owners of ss Uruguayo
Taunton—1927—Folio 61 Owners of Ketch Longney v Owners of ss Taunton
Re the Workmen's Compensation Acts

(From County Courts.)
(Interlocutory List.)

Griffiths v China Navigation Co ld
(Final List.)

Vince v Abel & Imray
Roberts v William Gardner & Sons (Gloucester) ld
Gardner v Vickers ld
Taylder v Lambton, Hetton and Joicey Collieries ld
Morrison v Owners of ship Aboukir
Woods v Same
Quarrell v Lamport & Holt ld
Needham v Ace Mill ld
The Bignall Hill Colliery Co ld v Deakin
Watson v Government Instructional Centre, Birmingham
Dodd v The Oceanic SteamNavigation Co ld
Wiles v Ellerman's Wilson Line ld
Skidmore v Bullock, Lade & Co. ld
Edward Curran & Co ld v Kays
Barry v Owners of ship Porthleven
Sidney Lee (Exeter) ld v James

STANDING IN THE "ABATED" LIST.

FROM THE PROBATE AND DIVORCE DIVISION.

Divorce Sneyd v Sneyd (Wilmer co-respt)
Same v Same (s.o. generally)

FROM THE CHANCERY DIVISION.

(Final List.)

Re Wombwell Brodrick v Hohler (s.o. generally)

FROM THE KING'S BENCH DIVISION.

(Interlocutory List.)

Griffiths v W B Frick, Son and Lloyd & ors (adjourned Feb. 20, 1928, to be re-instated after statement of claim and particulars delivered)

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

For the purpose of securing the more speedy disposition of business and especially of the shorter Witness Actions, the Judges of the Chancery Division are divided into two groups of three each, and there are three lists, namely: The Non-Witness List, The Witness List Part I, into which the shorter Witness Actions will go, and the Witness List Part II, into which the longer Witness Actions will go.

GROUP I—Mr. Justice EVE, Mr. Justice RUSSELL and Mr. Justice ROMER.

GROUP II—Mr. Justice ASTBURY, Mr. Justice TOMLIN and Mr. Justice CLAUSON.

EASTER SITTINGS, 1928.

GROUP I.

Mr. Justice EVE will take the Non-Witness business as set out in the Easter Sittings Paper.
Mr. Justice RUSSELL will take Part II of the Witness List.
Mr. Justice ROMER will take Part I of the Witness List. Companies (Winding up) business will be taken on each Monday.

GROUP II.

Mr. Justice ASTBURY will take the Non-Witness business as set out in the Easter Sittings Paper.
Mr. Justice TOMLIN will take Part I of the Witness List. Bankruptcy business will be taken as announced in the Easter Sittings Paper.
Mr. Justice CLAUSON will take Part II of the Witness List.

Before Mr. Justice EVE.

For Judgment.

Mayor, &c. of Boro' of Newport v Isle of Wight Farmers' Trading Soc ld

For Hearing.
Short Causes.

Re International Rubber Manufacturing Co ld Grimston Trust ld v The Company
Wolstenholme v Widow

Further Considerations.

Re Earle Earle v Earle
Re Jones Roberts v Jones
Re Kendall Rundle v Kendall

Retained Witness Actions.

Hoskyns-Abrahall v Paignton U D C (pt hd)
Re James Webbe v James (pt hd)

Adjourned Summonses.

Re Bentley Williams v Redard
Re Goddard Wood v Goddard
Re Tointon Tointon v Tointon
Re Richmond Richmond v Richmond
Re Thompson Humble v Sunderland Orphan Asylum
Re Clouter Public Trustee v Middlesex Hospital
Re Foster Slater v Russell
Re Dore Bone v Dore
Re Tapp Tapp v Tapp
Re Dering Fane v Dering
Re Howard Lee v Att-Gen
Re Bailey Stonehouse v Bailey
Re England England v England
Re Greener Smith v Greener
Re Adams Public Trustee v Brendon
Re Blackaby Waterworth v Blackaby
Re Gibbs Gibbs v Salaman
Re Guerrier Public Trustee v South London Hospital for Women
Re Gough Hall v Hall
Re Bryde Lloyds Bank ld v Garritt
Re Brown Brown v Davidson
Re Torbay Hospital Sanders v Iredale
Re Atchison Douglas v Maycock
Re Terry & Leetham's Contract Terry v Robinson
Re Wells Phillips v Wells
Re Scarisbrick Smalley v Scarisbrick
Re Same Same v Same
Partridge & Dighton v Provincial Cinematograph Theatres ld
Re Twyford Hughes v Twyford
Re Crossbee Godfrey v Oakey
Re Moore Public Trustee v Pollock
Re Lawford Public Trustee v Pollock
Re Goldberg Goldberg v Goldberg
Re Spencer & Hauser's Contract Re Law of Property Act, 1925
Re McCabe Re Law of Property Act, 1925
Re Edwards Drake v Edwards
Re Ainsworth Rylands v Roberts
Re Austin Collins v Margetts
Re Sanders Dugdale v Sanders
Re Morgan Bowen v Williams
Re Stokes Bowen v Davidson
re Williamson Williamson v Williamson
Re Wilkinson Lloyds Bank ld v Richmond
Re Evans Richards v Davies
Re Roe Roe v Roe
Re Marshall Tate v Wiggins
Re Field Public Trustee v Field
Re Hudson Goldsmid v Macgillicuddy
Re Mander Mander v Mander
Re Dobson Preston v Dobson
Re Johns Johns v Flecker
Re Johns Worrell v Johns
Re King Pettingell v Boll
Re Hookham Westminster Bank ld v Hookham
Re Gunnery Hunt v Gunnery
Re Wiltshire Head v Wiltshire
Re Edgar Edgar v Edgar
Re Meacock Sayer v Meacock
Re Wilson Doxey v Davis
Re Pennington Fraser v Pennington

Re Nicoll Troup v Todd
Re Rittner Public Trustee v Bulmer
Re Marfleet Marfleet v Marfleet
Re Sinclair Public Trustee v Summerskill
Re Rowlands Rowlands v Roberts
Re Cartman Re Settled Land Acts, 1925
Re Sutcliffe Sutcliffe v Sutcliffe
Re Sutcliffe Sutcliffe v Robertshaw
Re Walthew Peirce v Cunliffe
Re Wilson Bristow v Bishop of London
Re Pontifex Pitt v Longton
Sampson v Radcliffe
Penwyllt Silica Brick Co ld v Amalgamated Dinas Silica Works ld
Re Willett Carfrae v Sharp
Re Poyser Freeman v Cox
Re Charlton Chilman v Charlton
Re Pearce Blount v Blount
Re Peaston Peaston v Peaston
Re Chew Walton v Southam
Re Williams Gough v Habershon
Re Bates Mountain v Bates
Re Reid Smith v Reid

Before Mr. Justice RUSSELL.
Witness List. Part II.

Gowen v Crisp (not before Trinity)
Phillippi v Administrator of German Property (s.o. for Attorney-General)
Arthur du Cros v The Dunlop Rubber Co ld
Alfred du Cros v Same
George du Cros v Same
The Dunlop Rubber Co ld v du Cros
Same v Same
Same v Same
Same v Same
Same v Ormrod
The Dunlop Rubber Cotton Mills v Same
Norddeutsche Bank in Hamburg v The Nobel Dynamite Trust Co ld (s.o. for Att-Gen)
Cambridge University Press v University Tutorial Press ld
Warner Bros Pictures (Inc) v Gaumont Co ld (fixed for Apl 24)
Farnsworth v Farnsworth
Re The Companies (C) Act 1908 Re The Windsor Steam Coal Co (1920) ld
John Wright & Eagle Range ld v General Gas Appliances ld (fixed for May 1)
Berrington v Porter
Cobbold v Garrett (s.o.)
Re Lydenburg Proprietary Mines ld Price v The Company
Bennett v Quarterly Dividends ld
Sheldon v Kingston
Re Companies (C) Act, 1908 W H Bowaters ld
Princess Royal Colliery Co ld v Park Colliery Co ld
Ellis v Ellis
Dalrymple v Hatry
Douthwaite v Brewster
Re Cardwell Cardwell v Cardwell
Rose Street Foundry & Engineering Co ld v India Rubber, Gutta Percha Telegraph Works Co ld
Re The Companies (C) Act, 1908 Re H Cohen ld
Eddowes v Newland
Re Davis Hartwell v Davis
Bellamy v Mellor
Chapman v Chapman
James v Andrews Same v Same (consolidated actions)
Kurland v Vallentine
Re The Companies (C) Act, 1908 Re The Arley Spinning Co ld
Re The Companies (C) Act, 1908 Re Cinemas (West) ld (not before Trinity)
Barnsley v Greengrow
Dickinson v Cottrell
Kilby v Ashby
Driscoll v Selby
Glover v Collden
Tomlinson v Smith
Attorney-General v Dale
Tolley v Hawkins
Crabtree v General Electric Co ld
Attorney-General v Cotterell
Abbott v Ner-Sag ld
The Burlington Property Co v Meux Brewery Co ld (restored)
Polikoff v Crowther
Leckie v Pickford
Grimwood v Aldenham
Talbot v Barber
Labrador Co v Bynoe
Coutts & Co v C Turner & Son ld
Bond v National Union of Seamen
Flint v Brown
British Trust & Banking Co ld v S & F S James
Santa Fe & Cordoba Ry Syndicate ld v Bordeni Syndicate ld
Ward v Kellaway
Bambrick v Whitstable Electric Co ld
Simons v British Controlled Oilfields ld
Shearman v Burnley
J Crowther & Sons ld v Polikoff Same v Same (consolidated actions)
Hollister v Lewis
Smith v Hardwick
Cookson v Sheid
Cotter v National Union of Seamen
Dempsey v Jauncey
Allison v Vandervell
Attorney-General v Cambridge C C
Slipper v Sharpe
Hyde v Harrison
Greengrass v Ahern
Thomas v Lewis
Binks v Rank
Re Wade Bouskell v Rolleston
Davies v National Bank ld
Tanner v National Union of Seamen
Rothwell-Jackson v National Provincial Bank ld
Walworth Pharmacy ld v Farquhar

Before Mr. Justice ROMER.
For Judgment.

First Russian Insce Co (in liquidation) v London & Lancashire Insce Co ld

Witness List. Part II.
For Hearing.

Boultwood v Paignton Urban District Council (pt hd)

Witness List. Part I.

Actions, the trial of which cannot reasonably be expected to exceed 10 hours.

Nixon v H A P P Tanning Co ld
George v George
Evans v Forward
Williams v Lewis
Bournemouth - Swanage Motor Road & Ferry Co v Harvey & Sons
Societe Francaise Radio - Electrique v West Central Wireless Supplies
Blasius v March
Re Christoforides Preston v Spenceley

(To be continued.)

Stock Exchange Prices of certain Trustee Securities

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 26th April, 1928.

	Middle Price 18th April	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	87⅝	4	11	6	—		
Consols 2½%	56¾	4	8	0	—		
War Loan 5% 1929-47	102⅞	4	17	0	4	18	9
War Loan 4½% 1925-45	98	4	12	0	4	16	6
War Loan 4% (Tax free) 1929-42	100½	4	0	0	4	0	0
Funding 4% Loan 1960-1990	92	4	7	0	4	14	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93¾	4	6	0	4	7	0
Conversion 4½% Loan 1940-44	98¼	4	12	0	4	16	0
Conversion 3½% Loan 1961	78	4	10	0	—		
Local Loans 3% Stock 1921 or after	65½	4	12	0	—		
Bank Stock	264	4	11	0	—		
India 4½% 1950-55	92½xd	4	17	0	5	0	0
India 3½%	71	4	19	0	—		
India 3%	61	4	19	0	—		
Sudan 4½% 1939-73	96	4	14	6	4	17	0
Sudan 4% 1974	83	4	16	0	4	17	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84	3	13	0	4	6	0
Colonial Securities.							
Canada 3% 1938	86	3	12	0	4	18	0
Cape of Good Hope 4% 1916-36	93	4	6	0	5	0	6
Cape of Good Hope 3½% 1929-49	82	4	6	0	5	0	0
Commonwealth of Australia 5% 1945-75	100	5	0	0	5	2	6
Gold Coast 4½% 1956	94	4	15	6	4	17	6
Jamaica 4½% 1941-71	93	4	16	0	4	18	6
Natal 4% 1937	93	4	5	0	5	0	0
New South Wales 4½% 1935-45	91	4	19	0	5	7	0
New South Wales 5% 1945-65	99	5	1	0	5	3	0
New Zealand 4½% 1945	96	4	13	0	4	17	6
New Zealand 5% 1946	104	4	16	6	4	16	6
Queensland 5% 1940-60	98	5	2	0	5	3	0
South Africa 5% 1945-75	103	4	17	6	5	0	0
South Australia 5% 1945-75	99	5	1	0	5	0	0
Tasmania 5% 1945-75	101	4	19	0	5	0	0
Victoria 5% 1945-75	99	5	1	0	5	0	0
West Australia 5% 1945-75	99	5	1	0	5	2	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	63	4	15	6	—		
Birmingham 5% 1946–56	103	4	17	0	4	17	0
Cardiff 5% 1945–65	102	4	18	0	4	18	0
Croydon 3% 1940–60	70	4	5	6	5	0	0
Hull 3½% 1925–55	78	4	10	0	5	0	0
Liverpool 3½% Redeemable at option of Corporation	74	4	14	6	5	0	0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	55	4	11	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65½	4	12	6	—		
Manchester 3% on or after 1941	64	4	13	6	—		
Metropolitan Water Board 3% 'A' 1963–2003	64	4	13	0	4	17	0
Metropolitan Water Board 3% 'B' 1934–2003	65½	4	12	6	4	15	6
Middlesex C. C. 3½% 1927–47	83	4	5	6	4	17	0
Newcastle 3½% Irredeemable	72	4	17	0	—		
Nottingham 3% Irredeemable	63	4	15	6	—		
Stockton 5% 1946–66	102	4	18	0	4	19	0
Wolverhampton 5% 1946–56	102	4	18	0	5	0	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	82½	4	17	0	—		
Gt. Western Rly. 5% Rent Charge	102½	4	17	6	—		
Gt. Western Rly. 5% Preference	100½	5	0	0	—		
L. & N. E. Rly. 4% Debenture	82¼	4	17	0	—		
L. & N. E. Rly. 4% Guaranteed	76½	5	5	0	—		
L. & N. E. Rly 4% 1st Preference	68	5	17	6	—		
L. Mid. & Scot. Rly. 4% Debenture	84½	4	15	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed	83	4	16	6	—		
L. Mid. & Scot. Rly. 4% Preference	77¾	5	3	0	—		
Southern Railway 4% Debenture	84½	4	15	0	—		
Southern Railway 5% Guaranteed	100	5	0	0	—		
Southern Railway 5% Preference	94½	5	6	0	—		

Continued from page xiv.

WANTED, preferably in South Wales or Monmouthshire, by solicitor of eight years' standing now in practice on his own account, Managing Clerkship or Assistant Solicitorship with a well-established firm, having an extensive practice, chiefly in Conveyancing. Accustomed to act without supervision, especially in Conveyancing and Probate matters and also willing to assist generally. Advocacy not objected to, if required. Welsh speaking. Full particulars together with copies of recent testimonials furnished on application to "A.B.," Box 343, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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The Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION, OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone: Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion, and the name of this paper.

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